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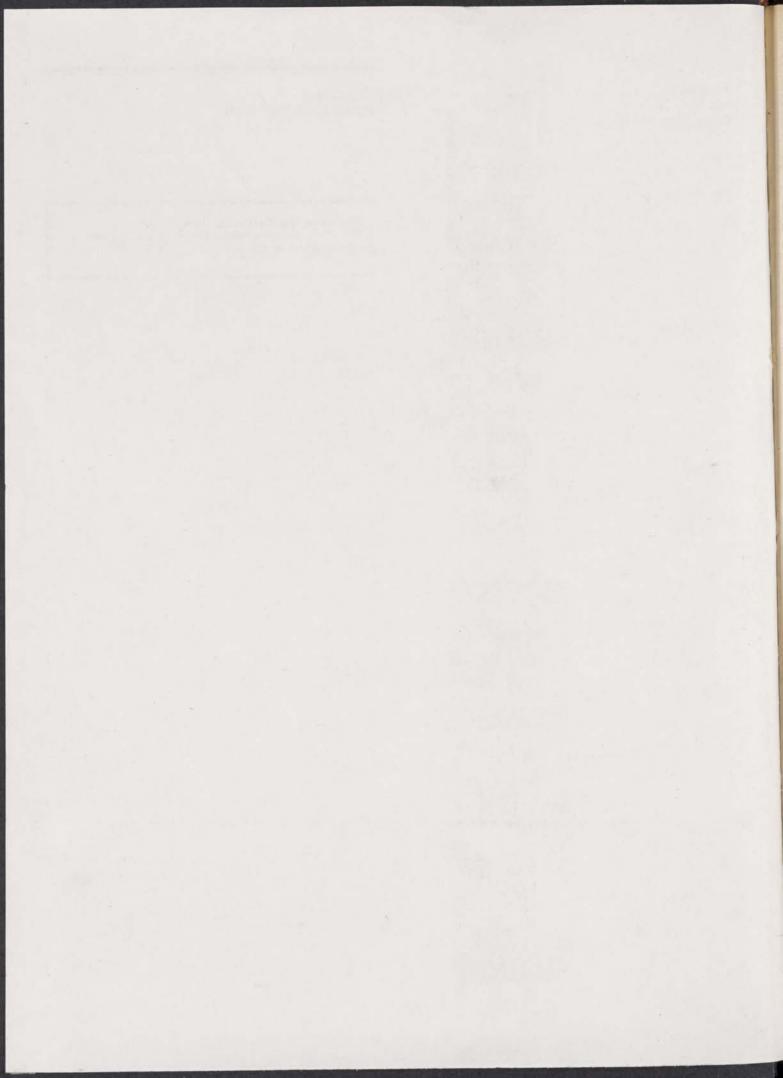
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WHO: The Office of the Federal Register.

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of Federal Regulations.
3. The important elements of typical Federal Register documents.

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### WASHINGTON, DC

WHEN: WHERE: December 7, at 9:00 a.m.
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RESERVATIONS: 202-523-5240.

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## **Rules and Regulations**

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44

U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

#### DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-88-115 IFR]

Navel Oranges Grown In Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Revised Nomination Procedures for the Navel and Valencia Orange Administrative Committee Memberships

AGENCY: Agricultural Marketing Service,

ACTION: Interim Final Rule Revising an Interim Final Rule with Request for Comments.

SUMMARY: This interim final rule will revise an interim final rule published in the September 2, 1988, issue of the Federal Register (53 FR 34022) and invites comments on the establishment of revised nomination procedures for membership on the Navel and Valencia Orange Administrative Committees (committees), which are responsible for local administration of their respective orders. The September 2, 1988, interim final rule allowed the U.S. Department of Agriculture (Department) to conduct nominations of both committees using the interim nomination procedures described in that rule. This interim final rule will revise those procedures to clarify and improve this operation. DATES: Interim final rule effective on November 30, 1989. Comments must be

received by January 2, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges, respectively, grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under criteria contained

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action is essentially small entities acting on their own behalf. Both the Act and the RFA have small entity

orientation and compatibility.

There are approximately 123 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under the respective orders and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small

The navel and Valencia orange marketing orders were amended, effective September 2, 1988, (53 FR 34026), to change committee structure and the basis for industry representation on the committees. The amendments are intended to provide a more flexible framework for apportioning committee membership among segments of the industries.

A September 2, 1988, interim final rule (53 FR 34022) provided interim nomination procedures for membership on the committees and allowed the Department to conduct initial nominations for both committees. In addition, comments were invited from interested persons until November 1. 1988. One comment was received from Mr. James A. Moody, counsel for Sequoia Orange Co., Inc.

The interim nomination procedures established in the September 2, 1988, interim final rule were used to select a new Navel Orange Administrative Committee on November 8, 1988, and a new Valencia Orange Administrative Committee on March 7, 1989. This interim final rule will revise the interim procedures.

The amended orders and this interim final rule provide for nomination procedures involving three nominating entities. Nominating entity 1 is the cooperative marketing organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the current year in which nominations are made. Nominating entity 2 groups are composed of individual handlers or groups of handlers not affiliated with nominating entity 1 who declare themselves to be nominating entities. These groups or coalitions may be made up solely of cooperative handlers, a combination of cooperative and independent handlers, or solely independent handlers. Nominating entity 3 is comprised of growers not affiliated with handlers in nominating entities 1 or 2.

Sections 907.102(a)(1) and 908.102(a)(1) of the interim final rule state that the Secretary will notify all handlers of their percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the fiscal (navel oranges) or marketing (Valencia oranges) year in which nominations are made.

This interim final rule will clarify the previous interim rule so that only individual handlers not affiliated with nominating entity 1 will be notified of their percentages of total orange dispositions. Handlers affiliated with nominating entity 1 do not need to know their individual percentage of dispositions since they are already committed to nominations through the cooperative marketing organization. The cooperative marketing organization which qualifies as nominating entity 1 will be notified of the total percentage of dispositions of all of its handlers at the same time that nominating entities 2 and 3 are notified of dispositions.

In addition, §§ 907.102(a)(1) and 908.102(a)(1) will be further modified to provide that designated employees of the committees will inform all handlers not affiliated with nominating entity 1 of their percentage of total orange dispositions in the current fiscal (navel oranges) or marketing (Valencia oranges) year and the minimum percentages required to be allocated grower and/or handler members on the committees. The September 2, 1988, interim final rule provided that the Secretary will inform all handlers of the percentage of total dispositions. However, this method has proved inefficient and time consuming. Designated employees of the committees have this information readily available. Therefore, the interim final rule is further revised to provide that designated employees of the committees, rather than the Secretary, shall inform handlers not affiliated with nominating entity 1 of their percentages of total dispositions.

This interim final rule will further revise §§ 907.102(a)(1) and 908.102(a)(1) to require designated employees of each handler or individual designated by the handler as its representative in nominating entity 2 to submit a signed statement indicating the handler's willingness to participate in the nominating entity for the purpose of nominating members to the committees. This information is necessary to insure that the handler in fact belongs to that nominating entity 2 group.

This interim final rule will revise \$\$ 907.102(a)(1) and 908.102(a)(1) to require designated employees of the committees to submit grower lists for all nominating entities to the Department, upon request, even if the entity nominates its slate of candidates through action of its board of directors.

This is necessary to insure that no grower votes more than once in the nomination process.

The September 2, 1988, interim final rule requires nominating entity 2 handlers to submit grower lists to the Department. During the nominations, however, the Department encountered difficulty in receiving timely responses from nominating entity 2 handlers. Therefore, this interim final rule provides that, in the future, the Department will obtain grower lists for nominating entity 2 handlers from designated employees of the committees. This will help expedite the nomination process. In the event that the committees' employees are not able to provide grower lists in a timely manner, individual handlers will then be required to submit their grower lists to the Department.

The September 2, 1988, interim final rule requires the Department to hold candidate selection meetings for nominating entity 3 growers in all districts of the production area. A slate of grower candidates would be developed at such meetings. Provision was also made for growers to propose candidates for nomination without attending the candidate selection meetings by submitting candidates names on an approved form. In practice, the Department found that few growers attended the recent navel and Valencia orange nomination meetings. Instead, growers, for the most part, chose to propose candidates for nomination by submitting nominations on the approved forms without attending the candidate selection meetings. Therefore, under this interim final rule, candidate selection meetings will no longer be required for nominating entity 3 growers. Growers will propose candidates by submitting the names on an approved form to AMS's California marketing field office. These forms will be signed by at least 10 eligible growers. This interim final rule

§§ 907.102(a) and 908.102(a) accordingly. This interim final rule will further revise §§ 907.102(a) and 908.102(a). The September 2, 1988, interim final rule requires growers of nominating entity 3 to submit the names of proposed candidates on a form approved by the Secretary to the AMS California marketing field office. Such submission, if mailed, must be postmarked at least 10 days prior to a date established by the Secretary and, if hand delivered, must be received at least five days prior to such date. In practice in the nomination process, the Department has found such time frames to be too restrictive and lacking in flexibility. Therefore, under this interim final rule,

will revise paragraphs (3) of

the forms, whether posted or hand delivered, must be received prior to or on a date established by the Secretary.

The interim final rule published in the September 2, 1988, issue of the Federal Register (53 FR 34022) requested comments from interested persons until November 1, 1988. One comment was received from Mr. James A. Moody and is discussed herein.

Mr. Moody, in his comment on the September 2, 1988, interim final rule, raised several issues opposing the interim nomination procedures.

In his first issue, Mr. Moody stated that small growers and handlers suffer severe disadvantage under the interim procedures because they are not notified of the market share of Sunkist Growers, Inc. (Sunkist), the market share for each handler, and the names and addresses of handlers and growers eligible to nominate and vote. He further alleges that Sunkist knows its own and other handlers' percentage of total disposition (market share) as do members of the committees.

Sections 907.73(d) and 908.73(d) of the navel and Valencia orange marketing orders, respectively, prohibit the release of confidential or financial information submitted by a handler which include individual navel or Valencia orange handler's total dispositions. These sections state that all reports and information submitted by handlers shall be received by and at all times be in the custody of one or more designated employees of the committees. Such employees shall not disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received. Therefore, the market share or percentage of total dispositions of an individual handler may not be released to other handlers.

It is true that Sunkist should know the market share of each handler affiliated with Sunkist, as it is to be expected that a cooperative marketing organization would know the market share of those handlers whom it represents. Sunkist would not know the market share of handlers not affiliated with the organization. The nominating procedures provide that all nominating entities are notified of their percentage of total dispositions of navel or Valencia oranges at the same time.

Mr. Moody's comment states that members of the committees have been provided with individual navel or Valencia orange handlers' marker share. However, current procedures provide, in accordance with §§ 907.73(d) and 908.73(d), that committee members no longer receive this information in their capacity as committee members. In the course of the nominating procedures. navel and Valencia orange handlers are advised only of their own percentages of total navel or Valencia orange dispositions, and nominating entity 1 (which was Sunkist during both of the most recent committee nominations). was advised of its aggregate market share, and not the individual market share of its affiliated handlers. The market share, or percentages of total navel or Valencia orange dispositions, for any handler have not been disclosed to any other individual handler or to

Mr. Moody also states that small growers and handlers suffer a severe disadvantage because they are not notified of names and addresses of growers and handlers eligible to nominate and vote. There is no demonstrated need for growers and handlers to be notified of the names and addresses of growers. Growers do not form coalitions under the nomination procedures, handlers do. In addition, within a voting coalition, handlers are aware of the names and addresses of the growers who deliver fruit to them. However, there is sufficient reason for handlers to receive the names and addresses of other handlers. This information will aid handlers in contacting each other and forming coalitions. Once in contact with other handlers, individual handlers could then inform others of their percentage of total dispositions. For these reasons, this interim final rule will further revise the September 2, 1988, interim final rule to require the committees to provide handlers with a list of the names and addresses of all handlers at the same time handlers are notified of their respective percentages of total dispositions or market share.

In his second issue, Mr. Moody states that AMS's consideration of the economic impact of the September 2, 1988, interim final rule was deficient as the Administrator of the AMS did not "certify" that the interim final rule would not have a substantial economic impact on small entities. The entities regulated pursuant to the marketing orders are handlers of oranges. The majority of the 123 handlers of navel oranges and 115 handlers of Valencia oranges are small entities as that term is defined by the Small Business Administration. The Department and the AMS have adhered to the requirements of the navel and Valencia orange marketing orders, the Act, the RFA, the

Paperwork Reduction Act, the
Administrative Procedure Act, and the
Department's "Guidelines for Fruit,
Vegetable and Specialty Crop Marketing
Orders" in this rulemaking proceeding.
In the September 2, 1988, interim final
rule, the Administrator of the AMS
determined that issuance of the interim
final rule will not have a significant
economic impact on a substantial
number of small entities.

In his third issue, Mr. Moody stated that Sunkist enjoyed simplified nominating procedures. The recent amendment of the navel and Valencia orange marketing orders changed the provisions of the marketing orders concerning the structure of the committees. These amendments were approved by navel and Valencia orange producers in a referendum and the Final Order Amending the Orders was published in the September 2, 1988, issue of the Federal Register. The amendments provided for three nominating entities of which nominating entity 1 is the cooperative marketing organization which disposed of the largest percentage of the total volume of navel or Valencia oranges disposed of by all handlers in all outlets during the current year. Sunkist was the cooperative marketing organization which disposed of the largest percentage of the total volume of navel and Valencia oranges and qualified as nominating entity 1 for nomination purposes for both committees. As a cooperative marketing organization, Sunkist may decide to nominate members through its Board of Directors, an option open to any cooperative marketing organization in nominating entity 1 and 2. Therefore, the simplification of nominating procedures rises from the organization and nature of the cooperative marketing organization, and not from the identity of that organization.

For the reasons stated above, Mr. Moody's exception, asking that the names and addresses of handlers be made available to each handler in the nomination process has merit and is approved. All other exceptions to the interim final rule are denied.

After consideration of all available information, including the recently concluded amendatory proceedings relative to these orders, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Based on available information, the Administrator of the AMS has determined that issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the additional information collection provisions that are required by this interim final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0116 (navel oranges) and 0581–0121 (Valencia oranges). It is estimated that these changes will require 0.083 of an hour response time per handler every two years.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because the term of office for members of the Valencia Orange Administrative Committee begins February 1, 1990. Accordingly, nomination procedures should be in place as soon as possible in order for selection of a new committee.

### List of Subjects

### 7 CFR Part 907

Arizona, California, Marketing agreements and orders, Navels, Oranges.

#### 7 CFR Part 908

Arizona, California, Marketing agreements and orders, Oranges, and Valencias.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

Note: These sections will appear in the Code of Federal Regulations.

 The authority citation for 7 CFR parts 907 and 908 continues to read as follows:

Authority: Sections. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

#### PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Paragraph (a) of § 907.102 is amended by republishing the introductory text of paragraph (a), and by revising paragraphs (a) (1) and (3) to read as follows:

#### Subpart—Rules and Regulations

### § 907.102 Nomination procedures.

(a) The manner of nominating grower and handler members and alternate members of the committee shall be as follows:

(1) All handlers not affiliated with nominating entity 1 shall be notified by one or more designated employees of the committee of their percentage of the total volume of navel oranges disposed by all handlers in all outlets during the fiscal year in which nominations are made: Provided, That concurrent with such notification, such employees shall provide each handler of record with a list of the names and addresses of all navel orange handlers. For the purposes of forming nominating groups, such employees will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities of their formation: Provided, That nominating entity 2 handlers shall furnish to the Secretary an agreement signed by all the handlers in the declared group indicating each handler's willingness to participate in the nominating entity for the purpose of nominating members to the committee: Provided further, That a list containing the names and addresses of all growers by handler shall also be submitted, upon request of the Secretary, by designated employees of the committee. In the event that such employees of the committee cannot provide such a list, the Department may request a grower list from each handler affiliated with each nominating entity.

(3) Growers, pursuant to § 907.22(a)(3), and, if applicable, growers pursuant to § 907.22(a)(2), shall nominate grower members in accordance with the following procedures:

\*

(i) Any grower who in the current fiscal year is not affiliated with nominating entities 1 or 2 and delivered navel oranges to handlers shall be eligible to vote for nominees pursuant to

§ 907.22(g).

(ii) Growers shall propose candidates by submitting the names on a form approved by the Secretary to the Agricultural Marketing Service's California marketing field office and signed by at least 10 eligible growers. Such submission must be received on or before a date established by the Secretary.

(iii) Persons submitting names for candidcacy shall specify the position (i.e., grower member, alternate, or additional alternate) for which they wish to nominate. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the Secretary prior

to the date on which the ballots are prepared for mailing to eligible growers.

#### PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

### Subpart—Rules and Regulations

2. Paragraph (a) of § 908.102 is amended by republishing the introductory text of paragraph (a), and by revising paragraphs (a) (1) and (3) to read as follows:

#### § 908.102 Nomination procedures.

(a) The manner of nominating grower and handler members and alternate members of the committee shall be as follows:

(1) All handlers not affiliated with nominating entity 1 shall be notified by one or more designated employees of the committee of their percentage of the total volume of Valencia oranges disposed of by all handlers in all outlets during the marketing year in which nominations are made: Provided, That concurrent with such notification, such employees shall provide each handler of record with a list of the names and addresses of all Valencia orange handlers. For the purposes of forming nominating groups, such employees will state in such notification the minimum percentages required for a nominating entity to be allocated member positions and will, by a date specified in that notice, request notification by such entities of their formation: Provided, That nominating entity 2 handlers shall furnish to the Secretary an agreement signed by all the handlers in the declared group indicating each handler's willingness to participate in the nominating entity for the purpose of nominating members to the committee: Provided further, That a list containing the names and addresses of all growers by handler shall also be submitted, upon request of the Secretary, by designated employees of the committee. In the event that such employees of the committee cannot provide such a list, the Department may request a grower list from each handler affiliated with each nominating entity.

(3) Growers, pursuant to § 908.22(a)(3), and, if applicable, growers pursuant to § 908.22(a)(2), shall nominate grower members in accordance with the following procedures:

(i) Any grower who in the current marketing year is not affiliated with nominating entities 1 or 2 and delivered Valencia oranges to handlers shall be eligible to vote for nominees pursuant to § 908.22(g).

(ii) Growers shall propose candidates by submitting the names on a form approved by the Secretary to the Agricultural Marketing Service's California marketing field office and signed by at least 10 eligible growers. Such submission must be received on or before a date established by the Secretary.

(iii) Persons submitting names for candidacy shall specify the position (i.e., grower member, alternate, or additional alternate) for which they wish to nominate. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the Secretary prior to the date on which the ballots are prepared for mailing to eligible growers.

Dated: November 24, 1989.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 89-27982 Filed 11-29-89; 8:45 am] BILLING CODE 3410-02-M

### 7 CFR Part 985

[FV-89-001 FR]

Spearmint Oil Produced in the Far West; Revision of Salable Quantities and Allotment Percentages for "Class 1" (Scotch) and "Class 3" (Native) Spearmint Oils for the 1989-90 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** The Agricultural Marketing Service is adopting without modification as a final rule the provisions of an interim final rule which increased the quantities of "Class 1" (Scotch) and "Class 3" (Native) spearmint oils produced in the Far West that may be purchased from, or handled for, producers by handlers during the 1989-90 marketing year which began June 1, 1989. This action is taken under the marketing order for spearmint oil produced in the Far West to promote orderly marketing conditions and was recommended by the Spearmint Oil Administrative Committee, which is responsible for local administration of the order.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120. SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately nine handlers of Far West spearmint oil subject to regulation under the spearmint oil marketing order and approximately 253 spearmint oil producers in the regulated area. Of the 253 producers, 160 producers hold "Class 1" (Scotch) oil allotment base and 136 producers hold "Class 3" (Native) oil allotment base. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of Far West spearmint oil may be classified as small entities.

The Spearmint Oil Administrative Committee (Committee), during a June 28, 1989, teleconference meeting, unanimously recommended that the salable quantities and allotment percentages for both Scotch and Native spearmint oils for the 1989–90 marketing year be increased. Section 985.51(b) of the marketing order authorizes the Committee to recommend such an increase and to submit its recommendation, and the reasons for it.

to the Secretary of Agriculture for approval. The salable quantities and allotment percentages for those classes of oil were published in the March 8, 1989, issue of the Federal Register (54 FR 9766). This revision would have increased the salable quantity for Scotch oil from 706,742 to 840,099 pounds and increased the allotment percentage from 42 to 50 percent. However, the Committee, during an August 18, 1989, teleconference meeting, unanimously recommended that the salable quantity and allotment percentage for Scotch spearmint oil for the 1989-90 marketing year be further increased to 70 percent and 1,193,828 pounds, respectively. Thus, an interim final rule was published in the September 14, 1989, issue of the Federal Register (54 FR 37932). This interim final rule increased the allotment percentage for Scotch oil from 42 to 70 percent and the salable quantity from 706,742 to 1,193,828 pounds. In addition, the allotment percentage for Native oil was increased from 42 to 48 percent and the salable quantity was increased from 781,092 to 891,363 pounds. These revisions were issued pursuant to § 985.52 of the spearmint oil marketing order.

The salable quantity is the total quantity of a class of oil which handlers may purchase from or handle on behalf of producers during a marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage (which is the salable quantity multiplied by 100 divided by the total of all allotment bases) to the producer's allotment base for that class of oil.

#### Scotch Spearmint Oil

At its September 21, 1988, meeting, the Committee estimated trade demand for Scotch spearmint oil for the 1989-90 marketing year to be 718,000 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 718,000 pounds. The Committee estimated that 16,892 pounds would be carried in on June 1, 1989. This amount was deducted from the total supply needed leaving 701,108 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,682,719 pounds, resulted in 41.6 percent, which was the computed allotment percentage. This figure was adjusted to 42 percent and established as the 1989-90 Scotch allotment percentage which resulted in a 1989-90 salable quantity of 706,742

At the time of the June 28, 1989, Committee meeting, the 1989–90 salable percentage of 42 percent for Scotch oil, when applied to the then current total allotment base of 1,680,198 pounds, gave a 1989-90 salable quantity of 705,683 pounds. Since all growers were expected to either produce their individual salable quantity or fill any deficiencies with reserve pool oil, the total salable quantity which was available, when this figure was combined with the actual carry-in on June 1, 1989, was 723,372 pounds, and this was the total supply available for the 1989-90 marketing year. Carry-in on June 1, 1989, was 17,689 pounds of Scotch oil, a little higher than the Committee had estimated.

The Committee, at its June 28, 1989, meeting, recommended increasing the salable percentage of Scotch spearmint oil by 8 percent, from 42 to 50 percent, which would have made an additional 134,416 pounds available to the market. If these additional pounds were added to the total supply available of 723,372 pounds, the Committee felt at that time that the resulting 857,788 pounds would have met immediate needs while assuring growers that a burdensome supply would not be put on the market. The Committee therefore recommended that the 1989-90 Scotch salable percentage be increased from 42 to 50 percent, which would have resulted in an increase in the salable quantity from 706,742 to 840,099 pounds. This figure, when added to the June 1, 1989, carry-in of 17,689 pounds, would have resulted in a total available supply of 857,788 pounds.

The demand for Far West Scotch oil continued to increase due to a shortage of Midwest Scotch oil caused by the drought in the summer of 1988. During the 1988 fall planting season, when growers in the Far West began to realize that their Scotch oil reserves would be used to fill the unexpected demand, plans were made to increase the acreage of Far West Scotch oil. However, an extremely wet fall prevented any significant planting. In addition, the spring of 1989 was also very wet, and growers were forced to wait until very late in the spring to plant. Therefore, because of the wet conditions and delayed planting, the 1989 crop of Far West Scotch oil is expected to have a below average yield.

Uncertainties about the 1989-90 supply of Scotch oil caused concern among buyers and users of Scotch oil and resulted in the high demand and market activity that is presently occurring. In order to meet the increase in trade demand, a higher salable quantity and allotment percentage for Scotch oil were therefore required.

The June 28 recommendation would not have made the reserve Scotch oil available. This is because growers had reserve pool oil in excess of the amount needed to fill their annual allotment. Due to the continuning strong demand for Scotch spearmint oil, the Committee recognized that it was necessary to allow all the reserve pool oil to be made available for sale. Thus, the Committee, in an August 18, 1989, teleconference meeting, unanimously voted to revise its June 28, 1989, recommendation by

increasing the salable percentage of

Scotch spearmint oil from the recommended 50 to 70 percent.
Accordingly, all growers now have adequate annual allotment to market all the Scotch oil from current production and from the reserve pool.

When the 70 percent salable percentage is applied to the total Scotch oil allotment base of 1,680,198 pounds, it results in a salable quantity of 1,193,828 pounds. However, the actual amount of oil made available is the total estimated supply of 872,685 pounds. This is because very few growers have

individual supplies of oil equal to 70 percent of their base. However, since all of the estimated supply will likely be needed this year and it is desirable that all growers be able to market this oil, the Committee recommended that the 1989–90 Scotch oil salable percentage be further increased from its original June 28, 1989, recommendation of 42 percent to 70 percent. The following table summarizes the computations used in arriving at the Committee's recommendations.

	Recommendation Sept. 21, 1988 (pounds)	Recommendation June 28, 1989 (pounds)	Revised recommendation Aug. 18, 1989 (pounds)
(1) Carry-in (2) Total supply available (3) Desirable carryout	16,892 723,634	17,689 857,788	17,689 872,685 0
(4) Total allotment base for Scotch oil		1,680,198 50 840,099	1,680,198 70 1 854,996

Although 70 percent of the total 1989-90 allotment base figure of 1,680,198 pounds results in a salable quantity of 1,193,828 pounds, the actual amount of Scotch oil made available by this action is 872,685 pounds. This is because some growers do not have reserve pool oil and will not be able to fill the deficiency created by this increase.

Thus, the Department determined that an allotment percentage of 70 percent should be established for Scotch spearmint oil for the 1989–90 marketing year and issued the interim final rule. This percentage made available 872,685 pounds of Far West Scotch spearmint oil to handlers of Far West spearmint oil.

#### **Native Spearmint Oil**

At its September 21, 1988, meeting, the Committee estimated trade demand for Native spearmint oil for the 1989-90 marketing year to be 818,266 pounds. A desirable carry-out figure of 0 pounds was adopted and, when added to the trade demand, resulted in a total supply needed of 818,266 pounds. The Committee estimated that 40,000 pounds would be carried-in on June 1, 1989. This amount was deducted from the total supply needed, leaving 778,266 pounds as the salable quantity needed. This quantity, divided by the total of all allotment bases of 1,859,743 pounds, resulted in 41.8 percent which was the computed allotment percentage. This figure was adjusted to 42 percent and established as the 1989-90 Native allotment percentage which resulted in a 1989-90 salable quantity of 781,092 pounds based on the estimated total base of 1,859,743 pounds.

The 1989–90 salable percentage of 42 percent for Native oil, when applied to the revised total allotment base of 1,857,007 pounds, gave a 1989–90 salable quantity of 779,943 pounds. Since all growers were expected to either

produce their individual salable quantity or fill deficiencies with reserve pool oil, the total salable quantity made available, when this figure was combined with the actual carry-in on June 1, 1989, was 789,139 pounds. This was the total supply available for the 1989–90 marketing year. Carry-in on June 1, 1989, was 9,196 pounds of Native oil, which was lower than the Committee had estimated.

The potential shortage of Scotch oil put an extra demand on the supply of Native oil. In addition, recent events in China gave rise to concern about the supply of Chinese spearmint oil among buyers and users. Last year, the crop of Chinese oil was poor, and only 20,000 pounds were imported into the United States. In past years, as much as 170,000 pounds have been imported. Uncertainty about the Midwest production and the supply of oil from China contributed to a heightened demand and an increase in grower prices for Native oil from \$10.50 to \$11.00 per pound. A higher salable quantity and allotment percentage for Native oil was required in order to meet the increase in trade demand. The Committee therefore recommended increasing the salable percentage by 6 percent, from 42 to 48 percent, thus making an additional 11,420 pounds available to the market which increased the salable quantity from 781,092 to 891,363 pounds. The Committee decided that this figure met immediate needs while assuring growers that a burdensome supply would not be put on

the market. This figure added to the June 1, 1989, carry-in of 9,196 pounds resulted in a total available supply of 900,559 pounds. The following table summarizes the computations used in arriving at the Committee's recommendations.

	Original recommen- dation Sept. 21, 1988 (pounds)	Revised recommen- dation June 28, 1989 (pounds)
(1) Carry-in(2) Total supply	40,000	9,196
available(3) Desirable carryout(4) Total Allotment	821,092 0	900,559
base for Native oil (5) Allotment	1,859,743	1,857,007
percentage(6) Salable quantity	42 781,092	48 891,363

Thus, the Department determined that an allotment percentage of 48 percent should be established for Native spearmint oil for the 1989–90 marketing year. This percentage made available 900,559 pounds of Far West Native spearmint oil to handlers of Far West spearmint oil.

An interim final rule establishing those allotment percentages and salable quantities for Scotch and Native spearmint oils was issued on September 11, 1989, and published in the Federal Register on September 14, 1989 (54 FR 37932). Comments were solicited from interested persons through October 16, 1989. No comments were received. Thus, the allotment percentages and salable

quantitites as established by that interim final rule are adopted without change.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including that contained in the final rule published in the March 8, 1989, issue of the Federal Register (54 FR 9766), in connection with the initial establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils, the Committee's recommendations and other available information, it is found that to revise § 985.209 [54 FR 9766] so as to change the salable quantities and allotment percentages for Scotch and Native spearmint oils, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This action adopts as a final rule, without change, the provisions of the interim final rule. No comments were received concerning the interim final rule and no practical purpose would be served by postponing the effective date of this action.

#### List of Subjects in 7 CFR Part 985

Far West, Marketing agreements and orders, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

Note.—This section will not appear in the Code of Federal Regulations.

#### PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Accordingly, the interim final rule amending § 985.209, which was published at 54 FR 37935 on September 14, 1989, is adopted as a final rule without change.

Dated: November 24, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-27983 Filed 11-29-89; 8:45 am] BILLING CODE 3410-02-M

### DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 89-NM-121-AD; Amdt. 39-6404]

#### Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT. ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which requires repetitive inspections for cracks of an emergency exit torsion box beam, and repair, if necessary. This amendment is prompted by full-scale fatigue testing by the manufacturer, which revealed cracks in certain areas of the torsion box beam. This condition, if not corrected, could lead to reduced structural capability of the fuselage.

EFFECTIVE DATE: January 3, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest

Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

## FOR FURTHER INFORMATION CONTACT:

Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to Airbus Industie Model A300 series airplanes, which requires repetitive inspections for cracks of an emergency exit torsion box beam, and repair, if necessary, was published in the Federal Register on July 26, 1989 [54 FR 31045].

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter suggested that there was insufficient cause to proceed with the adoption of the rule since the unsafe condition identified in the preamble to the Notice, "potential decompression of

the fuselage," was not mentioned in the applicable service bulletin. Further, this commenter suggested that the intent of the procedures outlined in the service bulletin is merely to "avoid potentially extensive repairs in the future," and that adoption of an AD based on such "economic reasons" is not justified. The FAA does not concur with the commenter's suggestion that the proposed rule is not justified. Fatigue testing has revealed potential development of fatigue cracking in the emergency exit torsion box beam; such cracking presents an unsafe condition in the aircraft since it could eventually lead to reduced structural capability of the airplane fuselage. The FAA has determined that this unsafe condition could exist or eventually develop on Model A300 series airplanes, and that repetitive inspections of the affected area (and necessary repair of cracking) must be mandated to ensure that safety is not degraded. The appropriate vehicle for mandating such actions to correct an unsafe condition is the airworthiness

The FAA has reconsidered its description of the unsafe condition, and has determined that it is appropriate to delete the reference to "\* \* \* subsequent decompression of the airplane" from that description in this final rule. This change, however, does not affect the intent of this rule since the unsafe condition of "reduced structural capability of the fuselage" was also identified in the Notice and is addressed by this action.

One commenter questioned the need for the rule since the referenced service bulletin will become a part of the Significant Structural Inspection Program (SSIP). The FAA acknowledges that the service bulletin may be part of the SSIP; however, the SSIP document is under preparation and its date of issuance is not known. Once the SSIP is finalized and issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specified number of cycles at which the actions described in the service bulletin are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

Paragraph C. of the final rule has been revised to reflect that the Standardization Branch is the appropriate FAA office responsible for approval of required repairs of cracks exceeding 15 mm.

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule, with the changes noted above. These changes will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that will take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$18.480.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

#### PART 39-[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

Section 39.13 is amended by adding the following new airworthiness directive: Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–254, dated February 15, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Prior to the accumulation of the number of landings indicated below or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform an eddy current inspection of the emergency exit torsion box between Frame 57A and Frame 58, and between the left-hand and right-hand Stringers 14 and 15, in accordance with Airbus Industrie Service Bulletin A300-53-254, dated February 15, 1989.

1. For airplanes identified as Configuration 1 in the service bulletin, the initial inspection must be performed prior to the accumulation of 35,900 landings, and repeated thereafter at intervals not to exceed 26,300 landings.

2. For airplanes identified as Configuration 2 in the service bulletin, the initial inspection must be performed prior to the accumulation of 26,200 landings, and repeated thereafter at intervals not to exceed 21,500 landings.

3. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 35,300 landings, and repeated thereafter at intervals not to exceed 23,100 landings.

4. For airplanes identified as Configuration 4 in the service bulletin, the initial inspection must be performed prior to the accumulation of 25,700 landings, and repeated thereafter at intervals not to exceed 18,800 landings.

5. For airplanes identified as Configuration 5 in the service bulletin, the initial inspection must be performed prior to the accumulation of 34,500 landings, and repeated thereafter at intervals not to exceed 18,100 landings.

6. For airplanes identified as Configuration 6 in the service bulletin, the initial inspection must be performed prior to the accumulation of 25,100 landings, and repeated thereafter at intervals not to exceed 14,700 landings.

B. If cracks found are less than or equal to 15.0 mm (0.59 inch), repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-53-254, dated February 15, 1989. After repair, the inspections described in paragraph A., above, are no longer required.

C. If cracks found are greater than 15.0 mm (0.59 inch), repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region. After repair, the inspections described in paragraph A., above, are no longer required.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113. E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Divison, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, ANM-113, 9010 East Marginal Way South, Seattle, Washington,

This amendment becomes effective January 3, 1990.

Issued in Seattle, Washington, on November 17, 1989.

#### Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 89–28005 Filed 11–29–89; 8:45 am] BILLING CODE 4910–13–M

#### 14 CFR Part 39

[Docket No. 89-ASW-39; Amdt. 39-6380]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 222 and 222B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

summary: This amendment adopts a new airworthiness directive (AD) which requires the modification of the tail rotor boost cylinder support bracket on the Bell Helicopter Textron, Inc. (BHTI) Model 222 and 222B helicopters. The AD is prompted by a report of a fatigue failure of the support bracket bulkhead. Failure of the tail rotor boost cylinder support bracket bulkhead in flight could result in loss of flight control and possible loss of the helicopter.

DATES: Effective Date: December 20, 1989.

Compliance: Required within the next 50 hours' time in service after the effective date of this AD, unless already accomplished.

ADDRESSES: The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT:

Mr. Gary Roach, Rotorcraft Certification Office, Federal Aviation Administration, Fort Worth, Texas 76193–0170, telephone (817) 624–5179.

SUPPLEMENTARY INFORMATION: There has been a report of a fatigue failure of the tail rotor boost cylinder support bracket bulkhead. The failure occurred while the helicopter was on the ground with engines operating. The failure caused the tail rotor blades to go to an uncommanded full pitch position. After the failure there was no control of the tail rotor blade pitch through the antitorque pedals. Failure of the tail rotor boost cylinder support bracket bulkhead in flight could result in loss of flight control and possible loss of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires inspection and modification of the tail rotor boost cylinder support bracket and support bulkhead on BHTI Model 222 and 222B helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less

than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Regional Rules Docket

(otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

#### PART 39-[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Bell Helicopter Textron, Inc.: Applies to Model 222 helicopters, serial numbers (S/N) 47006 through 47079 and 47081 through 47084, and Model 222B helicopter, S/N 47132. This AD applies to these helicopters, certificated in any category, with tail rotor boost cylinder support bracket, part number (P/N) 222-031-471-001, installed. (Docket No. 89-ASW-39)

Compliance is required within 50 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent failure of the tail rotor boost cylinder support bracket bulkhead, which could result in loss of the helicopter, accomplish the following:

(a) Modify the Station 340 bulkhead in accordance with appendix I of this AD.

(b) Compliance with BHTI Technical Bulletin No. 222-83-55, dated April 25, 1983, or Part II of Alert Service Bulletin No. 222-89-55, dated August 24, 1939, constitutes compliance with this AD.

(c) An alternative method of compliance which provides an equivalent level of safety, may be approved by the Manager, Rotorcraft Certification Office, Southwest Region, Federal Aviation Administration. Fort Worth, Texas 76193-0176.

This amendment becomes effective December 20, 1989.

Issued in Fort Worth, Texas, on November 22, 1989.

#### John F. Williams,

Acting Manager, Rotorcraft Directorate, Aircraft Certfication Service.

#### APPENDIX I

(Bell Helicopter Textron Alert Service Bulletin No. 222-89-55, dated 8-24-89, contains the same technical requirements as this appendix)

49269

Accomplishment Instructions

1. Gain access to area by removing panel, P/N 222-031-464-133. Retain attaching hardware. Cracks found in the 222-031-416 bulkhead during inspection, up to 3.00 inches long and at least 2.0 inches from edge of material, may be repaired by stop drilling with No. 40 drill and deburring at both ends.

2. Disconnect actuator, P/N 22-382-002-003, remove support, P/N 222-001-730-005, and tube assembly, P/N 222-001-016-101, in accordance with Model 222 Maintenance Manual, Chapter 27-00-00, Section 27-30-00. Retain attaching hardware.

3. Refer to Figures 1 and 5. Remove support, P/N 222-031-471-29 and all attaching parts as a unit. Remove five (5) nutplates from the lower flange of the bulkhead.

4. Refer to Figure 2. Temporarily locate and attach brace, P/N 222-031-471-115, to the

forward face of the bulkhead.

5. Refer to Figures 3 and 4. Assembly together support, P/N 222-031-471-, two (2) radius blocks, P/N 20-042-8-20, and support, P/N 222-031-471-113. Clean the faying surfaces of radius blocks, and supports with MEK. Bond supports and radius blocks with Adhesive, P/N 299-947-100-TY2CL2. Rivet supports, P/N 222-031-471-111 and -113 together using sixteen (16) rivets, P/N MS20470AD4-6 while adhesive is wet. Allow adhesive to cure at 180 degrees for four (4) hours.

6. Refer to Figures 3 and 4. Temporarily attach the assembly (from Step 5) on brace, P/N 222-031-471-115 (See Step 4). Pick up all rivet holes in the bulkhead and add all holes in the bulkhead from the brace and assembly. Pick up the four (4) 0.263/0.256 inch diameter holes from the bulkhead into the brace and assembly. Remove parts and deburr all holes. Clean faying surfaces of filler, P/N 222-031-471-119 and -121, brace and bulkhead flange with MEK.

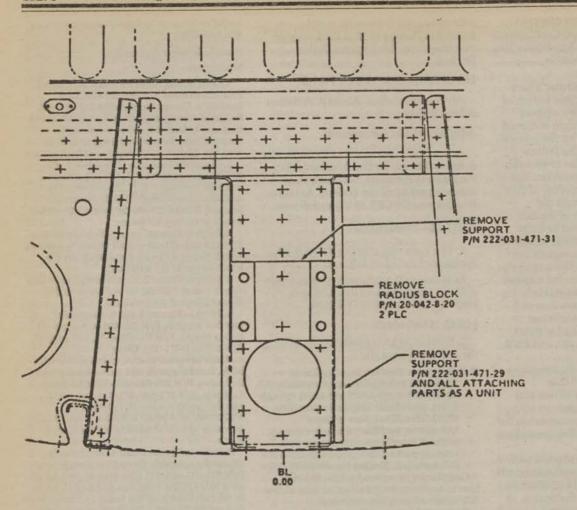
7. Refer to Figures 3, 4 and 5. Locate and bond fillers, P/N 222-031-471-119 and -121 with Adhesive, P/N 299-947-100-CL2TY2. Install brace, and assembled parts with rivets, as shown. Install five (5) nutplates, P/N MS21059L3, with rivets, P/N MS20426AD3-6. Install clips, P/N 222-031-471-117 and -118. Pick up existing holes in bulkhead flange. Pick up holes in support from clips. Remove clips and deburr holes. Install clips with rivets as shown.

8. Clean work area of all debris. Reinstall support, P/N 222-001-730-005, with retained hardware, reconnect actuator, P/N 222-382-002-003 and tube assembly, P/N 222-001-016-101, in accordance with instructions in 222 Maintenance Manual, Chapter 27-30-00.

 Check rigging of directional control system in accordance with instructions in Model 222 Maintenance Manual, Chapter 27– 30–00.

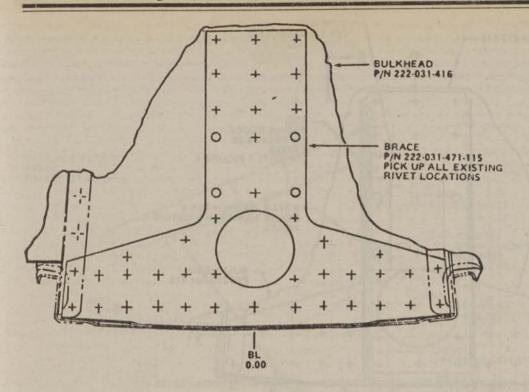
 Reinstall panel, P/N 222-031-464-133, with retained hardware.

BILLING CODE 4910-13-M



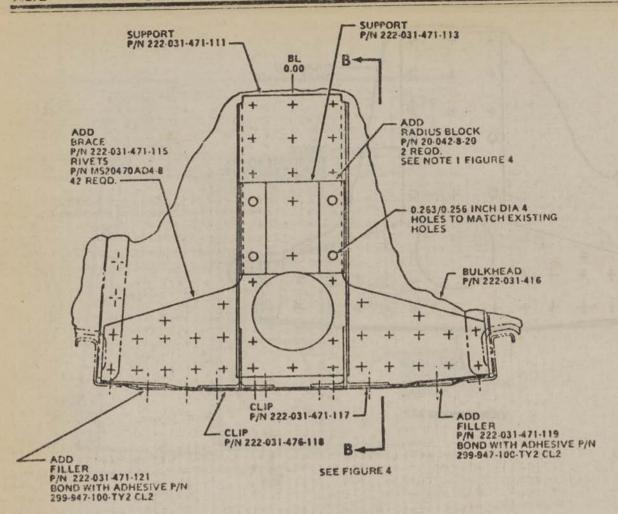
VIEW LOOK AFT AT BULKHEAD P/N 222-031-416 5TA' 340.0

SUPPORT P/N 222-031-471-29 REMOVAL. FIGURE 1



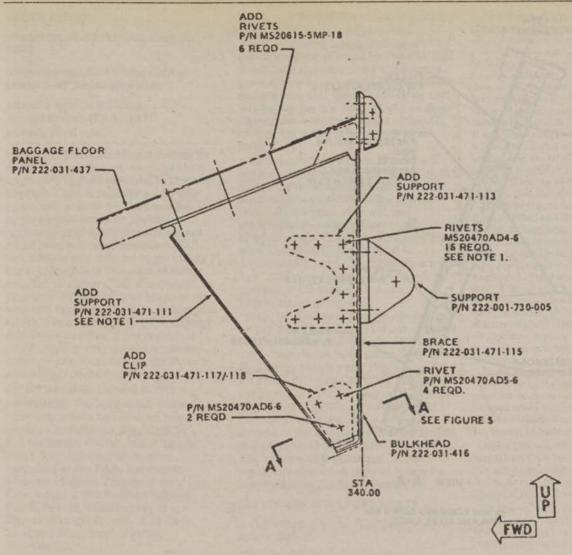
VIEW LOOKING AFT

INSTALLATION OF BRACE P/N 222-031-471-115. FIGURE 2



VIEW LOOKING AFT AT STA 340.0 BULKHEAD.

SUPPORT ASSEMBLY INSTALLATION FIGURE 3



Note:

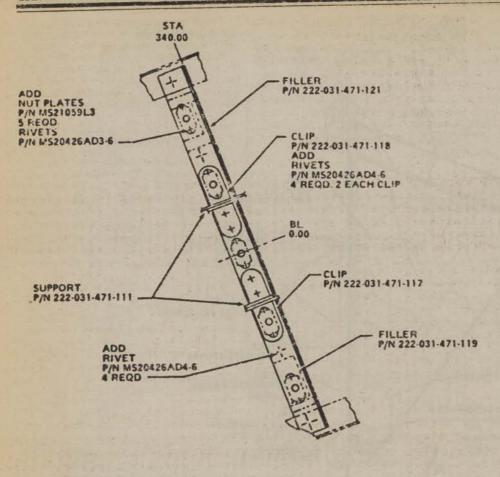
 Bond using adhesive P/N 299-947-100TY2 CL2. Support-111, Support--113 and two (2) radius block P/N 20-042-8-20.

VIEW LOOKING INBOARD LEFT SIDE

8-B

SUPPORT ASSEMBLY INSTALLATION.

FIGURE 4



VIEW A-A

VIEW LOOKING DOWN ON BULKHEAD FLANGE.

NUTPLATE INSTALLATION ON LOWER FLANGE OF BULKHEAD. FIGURE 5

[FR Doc. 89-28004 Filed 11-29-89: 8:45 am] BILLING CODE 4910-13-C

#### 14 CFR Part 39

[Docket No. 89-NM-154-AD; Amdt. 39-6405]

Airworthiness Directives; Fokker Model F-27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT. ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Fokker Model F-27 series airplanes, which requires a one-time inspection of both the right and left upper nacelle brace struts, and replacement of struts if the struts are found with self-tapping screws. This amendment expands the applicability of the existing AD to include additional affected airplanes. This amendment is prompted by discovery of brace struts with self-tapping screws on an airplane which was not included in the existing AD. This condition, if not corrected, could result in engine separation and subsequent structural damage to the airplane aft of the engine.

EFFECTIVE DATE: January 3, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 23314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mark Quam, Standardization Branch,
ANM-113; telephone (206) 431-1978.
Mailing address: FAA, Northwest
Mountain Region, 17900 Pacific Highway
South, C-68966, Seattle, Washington

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89–04–06, Amendment 39–6143 (54 FR 6642; February 14, 1989), applicable to Fokker Model F–27 series airplanes, to expand the applicability of the existing AD to include additional affected airplanes, was published in the Federal Register on September 1, 1989 (54 FR 36322).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule.
After careful review of the available data, including the comment noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule as proposed.

It is estimated that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$160.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; [2] is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

#### PART 39-[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

 Section 39.13 is amended by amending Amendment 39–6143 (54 FR 6642; dated February 14, 1989), AD 89– 04–06 as follows:

Fokker: Applies to Model F–27 series airplanes, Serial Numbers 10102 through 10307, 10308 through 10340, and 10342 through 10360, certificated in any category. Compliance is required as indicated, unless previously accomplished. To prevent engine separation and subsequent structural damage to the airplane aft of the engine, accomplish the following:

A. For airplanes listed in Fokker Service Bulletin F27/54-44, dated July 7, 1988: Within 60 days after March 28, 1989 (the effective date of AD 89-04-06, Amendment 39-6143), inspect both the right and left upper nacelle brace struts, in accordance with Fokker Service Bulletin F27/54-44, dated July 7, 1988. If any brace strut is found with a self-tapping screw, prior to the accumulation of 30,000 landings on the strut, or within the next 500 landings from May 27, 1989, whichever occurs later, replace the brace strut in accordance with the referenced service bulletin.

B. For airplanes Serial Numbers 10308 through 10340 and 10342 through 10360: Within 60 days after the effective date of this amendment, inspect both the right and left upper nacelle brace struts, in accordance with Fokker Service Bulletin F27/54-44, Revision 1, dated May 19, 1989. If any brace strut is found with a self-tapping screw, prior to the accumulation of 30,000 landings on the strut, or within the next 500 landings after the effective date of this amendment, whichever occurs later, replace the brace strut in accordance with the referenced service bulletin.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

The amendment amends Amendment 39-6143, AD 89-04-06.

This amendment becomes effective January 3, 1990.

Issued in Seattle, Washington, on November 17, 1989.

#### Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 89–28007 Filed 11–29–89; 8:45 am] BILLING CODE 4810–13-M

#### 14 CFR Part 39

[Docket No. 89-NM-140-AD; Amdt. 39-6406]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT. ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F-28 series airplanes, which requires a one-time inspection to detect cracks in the wing rear spar web plates, between Wing Stations 4790 and 5280, and repair, if necessary. This amendment is prompted by results of manufacturer's fatigue testing, which revealed cracks developing in the rear spar web plate inboard of Wing Station 5280. Undetected fatigue cracks could lead to reduced structural capability of the wing.

EFFECTIVE DATE: January 3, 1990.
ADDRESSES: The applicable service

information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431– 1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Fokker Model F-28 series airplanes, which requires a one-time inspection for cracks of the wing rear spar web plates, between Wing Stations 4790 and 5280, and repair, if necessary, was published in the Federal Register on August 22, 1989 (54 FR 34783).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter requested that the FAA delay issuing the rule until the applicable Fokker service bulletin is revised to provide repair instructions. The FAA acknowledges that the commenter is correct in that the service

bulletin does not provide sufficient instructions as to a method of repair of cracks. Part 2 of the service bulletin instructs operators to contact the manufacturer for repair guidance. Currently, there is no data from the manufacturer to include regarding the repair, since the repair depends upon the nature of the cracking found. While an operator might normally contact the manufacturer for repair information, the FAA realizes that such information may not be the only means of repair. Therefore, the final rule has been revised to require cracks to be repaired prior to further flight "in accordance with a method approved by the [FAA]." Under this provision, the FAA will review repair data submitted by any party and, if found to be acceptable, will approve it.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change discussed above. This change will neither increase the economic burden on any operator nor increase the scope of the rule.

It is estimated that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$7.680.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

#### PART 39-[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F-28 series airplanes, Serial Numbers 11003 through 11241, and 11991 and 11992, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing due to fatigue cracks, accomplish the following:

A. Perform external high-frequency eddy current inspection of the rear spar web plate between Wing Stations 4790 and 5280, in accordance with Part 1 of Fokker Service Bulletin F28/57-84, dated April 7, 1989, and the following schedule:

 For airplanes that have accumulated fewer than 45,000 landings, inspect within the next 2,000 landings after the effective date of this AD or prior to the accumulation of 35,000 landings, whichever occurs later.

2. For airplanes that have accumulated 45,000 landings or more but less than 55,000 landings, inspect within the next 1,000 landings after the effective date of this AD.

For airplanes that have accumulated
 55,000 landings or more, inspect within 500 landings after the effective date of this AD.

B. If cracks are found, repair prior to further flight, in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Suite 500,

Alexandria, Virginia 22314. These documents may be examined at the FAA. Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 3, 1990.

Issued in Seattle, Washington, on November 17, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 89–28006 Filed 11–29–89; 8:45 am]

#### 14 CFR Part 39

[Docket No. 89-CE-31-AD; Amdt. 39-6397]

Airworthiness Directives; Piper Models PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT. ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD). applicable to Piper Models PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P airplanes, which requires repetitive inspections of the exhaust tailpipe assembly and the installation of a Piper Engine Fire Detection Kit. This interim action is prompted by continued reports of failed exhaust system components and at least two in-flight fires. The actions specified in this AD will help ensure the continued integrity of the exhaust tailpipe assembly and provide the pilot with an early warning system should a malfunction occur.

DATES: Effective Date: December 29, 1989.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Piper Service Bulletin No. 920, dated August 7, 1989, applicable to this AD, may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567–4366. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Goodall, Aerospace Engineer, Systems Branch, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3020.

SUPPLEMENTARY INFORMATION: As a result of at least six reported occurrences of cracked, failed or leaking exhaust system components on the Piper PA-60 series airplanes, which have caused substantial damage and at least one accident, Piper issued Mandatory Service Bulletin (SB) No. 818, entitled "Engine Exhaust System Inspection," dated February 25, 1986. This bulletin required a one-time removal and inspection of the complete exhaust system for each engine, and the replacement of failed parts. Reinstallation of the exhaust system required special attention to the alignment, installation sequences and use of a high temperature lubricant.

The FAA issued a Notice of Proposed Rule Making (NPRM), published in the Federal Register on December 31, 1986 (51 FR 47251), which resulted in the issuance of AD 87–07–09, with an effective date of May 15, 1987, mandating the one-time inspection specified in SB No. 818.

At the FAA's request, Piper Aircraft Corporation reviewed the design of the PA-60 series exhaust systems in 1985, It concluded that a design change was unnecessary if the exhaust system was properly inspected and maintained in accordance with Piper's maintenance manual and applicable service

publications. However, reports continue to surface of broken V-clamps, clamp bolts, and cracked or damaged exhaust tailpipes and hardware. A Model PA-60-601P airplane crashed west of Atlanta, Georgia on June 21, 1989, resulting in three fatalities. A review of the air traffic control tower tapes revealed that the pilot reported smoke and then loss of power in the right engine shortly after takeoff. The pilot attempted to land at the nearest airport but the right wing and engine separated from the fuselage and the airplane crashed approximately five miles west of the airport. A review of the wreckage revealed over-heated wing structure near the right engine. One of the exhaust system tailpipes from the right engine was missing from the engine but was discovered in cracked condition along the final flight path of the airplane. An in-flight fire occurred June 23, 1989, on a Model PA-60-700P airplane in Indiana. The airplane was able to land but sustained extensive heat damage to the left wing structure. Investigation revealed that the V-band clamp, which attaches the tailpipe to the turbocharger, was

In light of the two recent incidents mentioned above, Piper Aircraft

Corporation has agreed to initiate another design review of the PA-60 series exhaust system in an attempt to resolve the problem of damaged wing structure resulting from exhaust system failures. Recent testing conducted at Piper using a heat source which simulated the exhaust system, showed that although the firewall is not perforated, the heat radiated through the firewall is intense enough to cause the fluid carrying lines behind the firewall to rapidly deteriorate and leak. This deterioration results in the release of flammable fluids which ignite within minutes of exposure. It is this combustion that is attributed to cause the damage to the wing structure and to the engine and propeller control rods. Additional tests are being conducted to develop a final solution for this problem.

As an interim action, the manufacturer has recommended an increase in frequency of exhaust tailpipe inspections until a Piper designed fire detection system is installed on the firewall of each airplane engine. This detection system provides a rapid aural and visual warning to the pilot of an exhaust system malfunction so that the engine can be shut down before the heat radiated through the firewall can become a problem. This action is set forth in Piper SB No. 920, dated August 7, 1989, entitled "Engine Tailpipe Inspection and Addition of Fire Detection System." The FAA concurs with this interim action until the design review is completed, at which time additional corrective action may be required. The FAA has also determined that the repetitive inspections and installation of the Fire Detection System should be mandated by AD action, since undetected failure to the exhaust tailpipe could delay the pilot's corrective action resulting in additional in-flight fires and/or catastrophic loss of wing

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued applicable to Piper (Aerostar) Models PA-60-600, PA-60-601, PA-60-601P, PA-60-602P, and PA-60-700P airplanes, which requires initial and repetitive inspections of the engine tailpipe assembly. Upon the installation of an Engine Fire Detection Kit, the AD will authorize longer inspection intervals. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good

cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations as follows:

#### PART 39-[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

Section 39.13 is amended by adding the following new AD: Piper (Aerostar): Applies to Model PA-60-600 (S/N 60-0001-003 through 60-0933-8161262), PA-60-601 (S/N 61-0001-004 through 61-0880-8162157 and 62-0001-013), PA-60-601P (S/N 61P-0157-001 through 61P-0860-8163455), PA-60-602P (S/N 62P-0750-8165001 through 62P-0932-8165055, and 60-8265001 through 60-8365021), and PA-60-700P (S/N 60-8423001 through 60-8423025) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To help prevent possible in-flight engine nacelle fire and the resultant damage to the wing structure, accomplish the following:

(a) Within the next 10 hours time-in-service (TIS) after the effective date of this AD and at each 25 hour TIS interval thereafter, accomplish the dismantling inspections and reinstallation of the exhaust tailpipe assembly as specified in Part I of Piper Service Bulletin (SB) No. 920, dated August 7, 1989. If any discrepancies are found, prior to further flight repair the discrepancies in accordance with the above SB or appropriate Piper Maintenance Manual.

(b) Within the next 100 hours TIS after the effective date of this AD, modify the airplane by installing a Piper Engine Pire Detection System Kit, Piper Part Number 764–158 (Opt 67), in accordance with the instructions in Part II of Piper SB No. 920, dated August 7, 1989, and modify the Airplane Flight Manual/Pilot's Operating Handbook by inserting the appropriate supplements provided with the above Kit.

(c) the repetitive inspection intervals specified in Paragraph (a) of this AD may be extended to 50 hours TIS when the modification specified in paragraph (b) of this AD has been accomplished.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, FAA, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 29, 1989.

Issued in Kansas City, Missouri, on November 7, 1989.

#### Don C. Jacobsen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28008 Filed 11-29-89; 8:45 am]

### FEDERAL TRADE COMMISSION

#### 16 CFR Part 3

#### **Rules of Practice**

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

summary: This document amends § 3.45 of the Commission's Rules of Practice by permitting, in unusual circumstances, the issuance of in camera orders without expiration dates. The amendment is necessary because the current rule has been construed to be inconsistent with the granting of indefinite in camera treatment. The amended rule should alleviate certain administrative burdens on respondents and agency staff as to in camera materials whose confidentiality is unlikely to decrease over time.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, (202) 326–2447; Office of the General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 3.45 of the FTC's Rules of Practice provides that every in camera order issued thereunder shall specify the date on which that order shall expire. See FTC Rule of Practice 3.45(b), 16 CFR 3.45(b). The Commission has construed this provision as inconsistent with the issuance of a permanent in camera order. Volkswagen of America, Inc, 103 F.T.C. 536, 539 (1984); see also E.I. Dupont de Nemours & Co., 103 F.T.C. 533, 534 (1984) (denial of request for indefinite in camera treatment, noting that, "[a]t some point in the future, [the information at issue] may well lose its competitive sensitivity \* \* \*").

In some cases, however, the competitive sensitivity or the proprietary value of information for which in camera treatment is requested will not necessarily diminish, and may actually increase, with the passage of time, e.g., highly secret product formulas and trade secrets concerning unpatented technology. In these instances, the Commission perceives little benefit to be gained by burdening the agency and its

staff with periodically reviewing confidentiality claims or requiring respondents to file petitions respecting material that in all likelihood remains

highly sensitive.

Accordingly, the Commission has determined to amend § 3.45(b) of its Rules of Practice by providing that, in unusual circumstances, an in camera order need not specify an expiration date, but requiring that the order in such cases must include a specific explanation as to why the protected information is likely to remain sensitive for an indeterminate period of time. The Commission intends that this discretion shall be exercised only where the party requesting in camera treatment for an indefinite period can show at the outset that the need for confidentiality of the material is not likely to decrease over time. Except as described above, this amendment does not change the general requirement that all in camera orders contain expiration dates, nor does it in any way alter the established procedures or grounds for seeking and obtaining in camera treatment.

This amendment relates solely to rules of agency practice and is therefore not subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. 553(a)(2). The requirements of the Regulatory Flexibility Act do not apply for the same

reason. 5 U.S.C. 601(2).

#### List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to

justice, Lawyers.

Accordingly, the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of Federal Regulations, as follows:

#### PART 3-[AMENDED]

 The authority for part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

Section 3.45 is amended by revising paragraph (b)(3) to read as follows:

.

#### § 3.45 In camera orders.

(b) · · ·

(3) A statement of the reasons for the date on which in camera treatment will expire. Such expiration date may not be omitted except in unusual circumstances, in which event the order must state with specificity the reasons why the need for confidentiality of the document, testimony, or portion thereof at issue is not likely to decrease over time, and any other reasons why such material is entitled to in camera

treatment for an indeterminate period. Any party desiring, for the preparation and presentation of the case, to disclose in camera documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the Administrative Law Judge setting forth the justification therefor. The Administrative Law Judge, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. In camera documents and the transcript of testimony subject to an in camera order shall be segregated from the public record and filed in a sealed envelope, bearing the title, the docket number of the proceeding, the notation "In Camera Record under § 3.45," and the date, if any, on which in camera treatment expires.

By direction of the Commission. Donald S. Clark,

Secretary.

[FR Doc. 89-28045 Filed 11-29-89; 8:45 am] BILLING CODE 6750-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Part 219

[Docket No. R-89-1437; FR-2541-0-3]

Flexible Subsidy Program—Capital Improvement Loans; Announcement of Office of Management and Budget Approval Number

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Technical amendment.

SUMMARY: In response to amendments made to section 201 of the Housing and Community Development Amendments of 1978, 24 CFR part 219 was reorganized into three subparts to cover the current program of Flexible Subsidy operating assistance, the new program of capital improvement loans, and general provisions applicable to both types of assistance. Certain sections of these regulations contained information collection requirements and were submitted for approval to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511). This document amends 24 CFR part 219

of HUD regulations to include OMB control numbers at the place where current information collection requirements are described.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, (202) 426–3944. This is not a toll-free number. SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The information collection requirements contained in the regulatory sections listed below have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and assigned the control number listed.

#### List of Subjects in 24 CFR Part 219

Reporting and recordkeeping requirements.

Text of the Amendment:

Accordingly, part 219 of title 24 of the Code of Federal Regulations is amended as follows:

#### PART 219-[AMENDED]

 The authority citation for part 219 continues to read as follows:

Authority: Sec. 201, Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z-1a; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

## §§ 219.210, 219.220, and 219.310 [Amended]

2. Sections 219.210, 219.220, and 219.310 are amended by adding at the end of each section the following statement:

(Approved by the Office of Management and Budget under OMB Control Number 2502– 0395).

Dated: November 24, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations. [FR Doc. 89–27998 Filed 11–29–89; 8:45 am] BILLING CODE 4210–27–M

#### **DEPARTMENT OF LABOR**

Occupational Safety and Health Administration

29 CFR Part 1926

#### **Hazard Communication**

CFR Correction

In title 29 of the Code of Federai Regulations Part 1926, revised as of July 1, 1989 on page 102, § 1926.59 was incorrectly followed by an effective date note and that note is removed.

BILLING CODE 1505-01-D

#### DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 916

Approval of Amendment to the Kansas **Abandoned Mine Land Reclamation** 

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM). Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of an amendment to the Kansas Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Kansas Plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment, which was submitted to OSM on June 29, 1989, and July 26, 1989, pertains to eligible lands and waters, project evaluation, rights of entry, liens, appraisals of private lands, project ranking and selection, organizational structure, and public participation.

EFFECTIVE DATE: November 30, 1989.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas City, MO 64106, Telephone: (816) 374-6405;

Kansas Department of Health and Environment, Mining Section, Bureau of Environmental Quality, Shirk Hall, 4th Floor, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231-8615.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office, (816) 374-6405.

#### SUPPLEMENTARY INFORMATION:

### I. Background

The Secretary of the Interior conditionally approved the Kansas AMLR program on February 1, 1982. All conditions were removed and the Secretary's approval of the revised Kansas AMLR plan was announced in the June 3, 1983, Federal Register (48 FR 24876). An amendment to the Kansas Plan, granting the State authority over emergency projects, was approved on January 10, 1989.

#### II. Proposed Amendment

On June 29, 1989, Kansas submitted to OSM part of a proposed regulatory revision that would amend its AMLR plan (Administrative Record No. AMI-KS-129). The proposed revisions would amend the Kansas Administrative Regulations (K.A.R.) at K.A.R. Chapter 47, Article 16. Specifically, Kansas proposes to amend: K.A.R. 47-16-1, Eligible Lands and Waters; K.A.R. 47-16-2, Reclamation Project Evaluation; K.A.R. 47-16-4. Entry for Studies or Exploration; K.A.R. 47-16-5, Entry and Consent to Reclaim; K.A.R. 47-16-6, Liens; K.A.R. 47-18-7, Appraisals; and K.A.R. 47-16-8, Satisfaction of Liens.

On July 26, 1989, Kansas submitted to OSM additional proposed revisions to amend its plan (Administrative Record No. AML-KS-135). The proposed revisions would amend State policies and procedures regarding project ranking and selection, organization structure, and public participation in the

AMLR program.

Under the revision, Kansas would use a phased process to select reclamation sites. This process provides for an orderly evaluation of each problem site in the State. Final selection of projects for funding would be based on a numerical score derived from a matrix analysis. The State also will request public comment on all projects proposed for funding, as well as any future amendments to the Kansas Plan. Kansas submitted the proposed

amendment on its own initiative.

OSM announced receipt of the proposed amendment in the August 30, 1989, Federal Register (54 FR 35894) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the amendment's substantive adequacy. No public comments were received by September 29, 1989, the close of the comment period. A public hearing was not held because no one requested an opportunity to testify.

On September 5, 1989, following a thorough review of the proposed amendment, OSM notified Kansas of the need for several nonsubstantive editorial changes and clarifications. On September 11, 1989, Kansas submitted the necessary clarifications and editorial corrections. The Director has determined that these corrections are insignificant in nature and, accordingly, require no further public comment.

#### III. Director's Findings

The Director finds, in accordance with section 405 of SMCRA, that the amendment submitted by Kansas meets the requirements of SMCRA and 30 CFR 884.15 in that:

1. The State has the legal authority. policies, and administrative structure necessary to implement the amendment.

2. The plan amendment meets all requirements of OSM's AMLR program provisions.

3. The State has an approved Surface Mining Regulatory Program.

4. The proposed amendment is in compliance with all applicable State and Federal laws and regulations.

### IV. Public and Agency Comments

OSM solicited public comment and provided opportunity for a public hearing on the proposed amendment. No comments were received, and since no one requested an opportunity to testify. no public hearing was held.

Pursuant to 30 CFR 884.14(a)(2), comments were also solicited from various Federal agencies with an actual or potential interest in the Kansas plan. None of the agencies notified submitted any comments regarding the

amendment.

#### V. Director's Decision

Based on the findings detailed above, the Director approves Kansas's June 29, 1989, and July 26, 1989, proposed amendment. The Federal regulations at 30 CFR part 916, codifying decisions concerning the Kansas AMLR plan, are amended to implement this decision.

### VI. Procedural Matters

## 1. National Environmental Policy Act

The Secretary has determined that pursuant to the Department of the Interior's Manual, 516 DM 6, Appendix 8, paragraph 8.4B(30), no environmental impact statement need be prepared for this rulemaking.

#### 2. Executive Order No. 12291 and the Regulatory Flexibility Act

On November 23, 1987, the Office of Management and Budget (OMB) granted OSM an exemption from sectons 3, 4, 7, and 8 of Executive Order 12291 for action directly related to approval or disapproval of State/Tribe AMLR plans and amendments. Therefore, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

### 3. Federal Paperwork Reduction Act

This rule does not contain information collection requirements that require

approval by OMB under 44 U.S.C. 3507 et seq.

#### **Effective Date**

This final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because:

(1) Kansas Department of Health and Environment, Mining Section is fully staffed and currently administering the Abandoned Mine Land Reclamation

Program; and

(2) OSM wishes to expedite the implementation of the revised AMLR plan amendment.

#### List of Subjects in 30 CFR Part 916

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Abandoned Mine Land Reclamation.

Dated: November 3, 1989.

#### Raymond L. Lowrie.

Assistant Director, Western Field Operations. 30 CFR Part 916 is amended as follows:

#### PART 916-KANSAS

 The authority citation of Part 916 is revised to read:

Authority: 30 U.S.C. 1201 et seq.

2. Section 916.25 is revised to read as follows:

# § 916.25 Approval of abandoned mine land reclamation plan amendments.

(a) The Kansas AMLR plan amendment allowing the State to assume responsibility for administering an emergency reclamation program was approved effective January 10, 1989.

(b) The Kansas AMLR Plan amendment submitted on June 29, 1989, and July 26, 1989, and modified on September 11, 1989, is approved effective November 30, 1989. [FR Doc. 89–28059 Filed 11–29–89; 8:45 am]

BILLING CODE 4310-05-M

### **DEPARTMENT OF TRANSPORTATION**

#### Coast Guard

33 CFR Part 100

[CGD7 89-47]

Special Local Regulations; City of Miami

AGENCY: Coast Guard, DOT. ACTION: Final rule.

summary: Special Local Regulations are being adopted for the City of Miami, Greater Miami Boat Parade. The event will be held on December 2, 1989 from 6:00 p.m. to 10:00 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on December 2, 1989 at 5:00 p.m. e.s.t. and terminate on December 2, 1989 at 11:00 p.m. e.s.t.

# FOR FURTHER INFORMATION CONTACT: LTJG R. Malcolm Jr., (305) 535-4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

#### Drafting Information

The drafters of this regulation are LT Alfred G. Santos, project attorney, Seventh Coast Guard District Office and LTJG Ralph Malcom Jr., project officer, USCG Group Miami.

#### Discussion of Regulations

The Greater Miami Boat Parade, also called "Winter Reflections on the Bay", is a nighttime parade of vessels ranging in length from 25–150 feet, decorated with holiday lights and ornaments. The parade will form in the staging area southeast of Dodge Island in Fisherman's Channel then proceed east towards Government Cut and then west through Government Cut to the Intracoastal Waterway (ICW). It will then proceed north up the ICW to Sunny Isle Causeway where it will disband. 75 vessels are expected to participate in the parade with over 1000 spectator vessels.

A Special Local Regulation is needed to prevent interruption of the parade due to unusually high vessel traffic and to prevent damage to vessels or injury to personnel from the planned operation.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

#### PART 100-[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0747 is added as follows:

### § 100.35-0747 Greater Miami Boat Parade.

(a) Regulated Area. A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade. The regulated area will also include that area of the north and south boundary as it moves north from the east side of the Intracoastal Waterway (ICW) to the center of the channel. The parade route is located in the Intracoastal Waterway (ICW), Miami, Florida starting in Government Cut, proceeding north in the ICW through the Venetian Causeway Bridge, and up the west channel of the Intracoastal Waterway (ICW). Vessels will proceed northward through the Julia Tuttle Causeway Bridge and the 79th Street Causeway Bridge, to a reviewing stand at Haulover Park Marina. Once past the reviewing stand, the participants will proceed to the Sunny Isle Causeway Bridge where they will disband.

(b) Special Local Regulations. (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants through the regulated area, all vessels may resume

normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) Effective Date. These regulations become effective on December 2, 1989 from 5:00 p.m. e.s.t. and terminate on December 2, 1989 at 11:00 p.m. e.s.t.

Dated: November 13, 1989.

#### Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89-27883 Filed 11-29-89; 8:45 am]

#### 33 CFR Part 100

[CGD7 89-50]

Special Local Regulations; City of Fort Lauderdale, Winterfest Boat Parade

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the City of Fort Lauderdale Winterfest Boat Parade. The event will be held on December 9, 1989, from 6:30 p.m. to 9:30 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

become effective on December 9, 1989, at 5:00 p.m. e.s.t. and will terminate on December 9, 1989, at approximately 11:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Contact LTJG R. Malcolm Jr. (305) 535–4304.

supplementary information: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

### Drafting Information

The drafters of this regulation are LCDR David G. Dickman, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Ralph Malcolm Jr., Project Officer, USCG Group Miami Beach, Florida.

Discussion of Regulations

The Fort Lauderdale Winterfest Boat Parade is a nighttime parade of vessels ranging in length from 25 feet to 150 feet, decorated with holiday lights and ornaments. The parade will form in the staging area at the Port Everglades Turning Basin. It will then proceed north up the Intracoastal Waterway (ICW) to Lake Santa Barbara, where it will disband. 110 vessels are expected to participate in the parade and over 1000 spectator vessels are expected along the parade route. These regulations are enacted to protect vessels participating in the parade as well as spectator craft. The regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate north in the ICW.

### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

#### PART 100-[AMENDED]

 The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary \$ 100.35-0750 is added as follows:

# § 100.35-0750 Fort Lauderdale Boat Parade, FL.

(a) Regulated Area. A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits north in the Intracoastal Waterway (ICW) in the vicinity of Fort Lauderdale, Florida. The parade starts in Port Everglades, proceeds north in the ICW through the 17th Street Bridge and the Las Olas Bridge, and continues up the ICW into Lake Santa Barbara, where the parade will disband.

(b) Special Local Regulations. (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants and the regulated area, all vessels may resume normal operations.

(2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.

(c) Effective Date. These regulations become effective on December 9, 1989, at 5:00 p.m. e.s.t. and terminate on December 9, 1989, at approximately 11:00 p.m. e.s.t.

Dated: November 21, 1989.

#### Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89-27971 Filed 11-29-89; 8:45 am]
BILLING CODE 4910-14-M

### 33 CFR Part 100

[CGD7 89-51]

Special Local Regulations; Kiwanis Club of Delray Beach Christmas Boat Parade

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Kiwanis Club of Delray Beach, Florida, Christmas Boat Parade. The event will be held on December 15, 1989, from 6:30 p.m. to 9:30 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

become effective on December 15, 1989, at 5:00 p.m. e.s.t. and will terminate on December 15, 1989, at approximately 11:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: Contact LTJG R. Malcolm Jr., (305) 535–4304

accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

#### Drafting Information

The drafters of this regulation are LCDR David G. Dickman, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Ralph Malcolm Jr., Project Officer, USCG Group Miami Beach, Florida.

#### Discussion of Regulations

The Kiwanis Club of Delray Beach Christmas Boat Parade is a nighttime parade of vessels ranging in length from 16 feet to 65 feet, decorated with holiday lights and ornaments. The parade will form in the staging area at Intracoastal Waterway Marker 46. It will then proceed south down the Intracoastal Waterway (ICW) to the C-15 Canal, where it will disband. Forty-five vessels are expected to participate in the parade and over 50 spectator vessels are expected along the parade route. These regulations are enacted to protect vessels participating in the parade as well as spectator craft. The regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade vessels. The

regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate south in the ICW.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

#### § 100.35-0751 Kiwanis Club of Delray Beach Boat Parade, FL.

- (a) Regulated Area. A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits south in the Intracoastal Waterway (ICW) in the vicinity of Delray Beach, Florida. The parade starts at ICW Marker 46. then proceeds south in the ICW to the C-15 Canal, where the parade will disband.
- (b) Special Local Regulations. (1) Entry into the regulated area is prohibited unless authorized by the Patrol Commander. After the passage of the parade participants and the regulated area, all vessels may resume normal operations.
- (2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.
- (c) Effective Date. These regulations become effective on December 15, 1989, at 5:00 p.m. e.s.t. and terminate on December 15, 1989, at approximately 11:00 p.m. e.s.t.

Dated: November 21, 1989.

#### Martin H. Daniell.

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 89-27973 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 100 [CGD7 89-54]

Special Local Regulations; Greater Boca Raton Chamber of Commerce Winter Fantasy Waterway Boat Parade

AGENCY: Coast Guard, DOT. ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Greater Boca Raton Chamber of Commerce Winter Fantasy on the Waterway Boat Parade. The event will be held on December 16, 1989, from 6:00 p.m. to 8:30 p.m. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective on December 16, 1989, at 6:00 p.m. e.s.t. and will terminate on December 16, 1989, at approximately 10:00 p.m. e.s.t.

FOR FURTHER INFORMATION CONTACT: LTJG R. Malcolm Jr., (305) 535–4304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical as there was insufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

#### **Drafting Information**

The drafters of this regulation are LCDR David G. Dickman, Project Attorney, Seventh Coast Guard District Legal Office, and LTJG Ralph Malcolm Jr., Project Officer, USCG Group, Miami Beach, Florida.

#### Discussion of Regulations

The Greater Boca Raton Chamber of Commerce Winter Fantasy on the Waterway Boat Parade is a nighttime parade of vessels ranging in length from 25 feet to 150 feet, decorated with holiday lights and ornaments. The parade will form in the staging area at the Intracoastal Waterway Canal C-15. It will then proceed south down the Intracoastal Waterway (ICW) to the Hillsboro Canal, where it will disband. Sixty to 80 vessels are expected to participate in the parade and over 100 spectator vessels are expected along the parade route. These regulations are enacted to protect vessels participating in the parade as well as spectator craft. The regulations establish a moving regulated area of 1000 feet ahead and 1000 feet astern of the string of parade

vessels. The regulated area also includes an area 50 feet east and west along the north-south axis of the regulated area as the participating vessels navigate south in the ICW.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

#### PART 100-[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0754 is added as follows:

## § 100.35-0754 Boca Raton Boat Parade, FL.

- (a) Regulated Area. A regulated area is established surrounding the parade participants as they transit the parade route. Nonparticipating vessels will be prohibited from entering an area encompassing 50 feet on either side of the north-south axis of the parade. The axis extends from 1000 feet ahead of the lead vessel in the parade to 1000 feet astern of the last participating vessel in the parade as the parade transits south in the Intracoastal Waterway (ICW) in the vicinity of Boca Raton, Florida. The parade will form in the staging area at the Intracoastal Waterway Canal C-15. It will then proceed south down the Intracoastal Waterway (ICW) to the Hillsboro Canal, where the parade will disband.
- (b) Special Local Regulations.(1)
  Entry into the regulated area is
  prohibited unless authorized by the
  Patrol Commander. After the passage of
  the parade participants and the
  regulated area, all vessels may resume
  normal operations.
- (2) A succession of not fewer than 5 short whistle or horn blasts from a patrol vessel will be the signal for any nonparticipating vessel to stop immediately. The display of an orange distress smoke signal from a patrol vessel will be the signal for any and all vessels to stop immediately.
- (c) Effective Date. These regulations become effective on December 16, 1989, at 5:00 p.m. e.s.t. and terminate on December 16, 1989, at approximately 10:00 p.m. e.s.t.

Dated: November 21, 1989.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 89-27972 Filed 11-29-89; 8:45 am] BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-36925]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Pfizer, Inc.

AGENCY: Environmental Protection Agency (EPA). ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions from Pfizer, Incorporated in Groton, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was originally approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

become effective January 29, 1990 unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565–3252; FTS 835–3252. SUPPLEMENTARY INFORMATION: On February 7 and August 30, 1989, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of State Order No. 8021 which the State of Connecticut issued to Pfizer, Incorporated in Groton, Connecticut. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on certain processes at Pfizer as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-

specific SIP revisions. EPA has reviewed State Order No. 8021 and has determined that the level of control required by this Order represents RACT for the operations at Pfizer covered by the State Order. Pfizer is a chemical manufacturer engaged in the manufacturing of synthesized pharmaceutical products and other types of chemicals at its Groton plant. The operations at Pfizer that produce pharmaceutical products and intermediates by chemical synthesis are subject to subsection 22a-174-20(t) of Connecticut's regulations entitled "Manufacture of synthesized pharmaceutical products." This regulation was adopted by Connecticut pursuant to guidance provided by EPA in the CTG document entitled "Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products" (EPA-450/2-78-029). All operations, however, do not engage in production covered by this regulation. These operations are exempt from the control requirements contained in subsection 22a-174-20(t). Because the potential VOC emissions from these

174–20(ee) of Connecticut's regulations.
As RACT for the processes subject to subsection 22a–174–20(ee), the State
Order requires Pfizer to install air pollution control equipment on any VOC

exempt operations exceed 100 tons per

year, they are subject to subsection 22a-

emission source at its Groton facility with maximum potential VOC emissions in excess of forty pounds per day. Each new piece of air pollution control equipment, except surface condensers and surface condenser/secondary control equipment combinations on any process vent, is required to demonstrate a minimum overall VOC reduction of eighty-five percent. Control equipment currently in operation must also meet a minimum overall VOC reduction of eighty-five percent. Surface condensers and surface condenser/secondary control equipment combinations on any process vent are required to demonstrate a minimum overall VOC reduction of ninety-five percent.

All pollution abatement equipment is also subject to an operation and maintenance program that is part of the State Order. This program requires Pfizer operate and monitor its control equipment in a prescribed manner. It also requires Pfizer to perform certain preventive maintenance at prescribed intervals depending on the type of pollution control equipment.

The State Order exempts any source at Pfizer's facility which emits less than forty pounds of VOC per day from any RACT requirements. This exemption is consistent with the provisions of subsection 22a-174-20(aa) of Connecticut's regulations which was approved by EPA on October 1, 1984 (49 FR 41026). For purposes of determining which of the facility's sources are exempt from meeting RACT, Pfizer must aggregate similar or identical VOC emission points. For each source that is exempt from meeting RACT, the DEP has imposed an enforceable daily cap of forty pounds VOC per day. Furthermore, the DEP has imposed daily and annual emission caps on each process equipment group that is used in manufacturing.

Part VIII(A)[4) of the Compliance
Timetable incorporated into the Order
provides that any new, less restrictive
emission limit on an existing process
resulting from a process change, or any
new emission limit on any new process
will be incorporated into Appendix B of
the Order. For the new, less restrictive
emission limits on existing processes,
EPA will have to approve these into the
SIP before Pfizer may use them to
comply with Federal law. These new
limits will be minor adjustments
affecting a few processes among Pfizer's
hundreds of emission points.

State Order No. 8021 also requires Pfizer to implement a fugitive leak detection program. This program will reduce VOC leaks from process valves, pumps, safety relief devices, agitators, piping conections, sampling connections, and vessels at Pfizer.

The State Order also imposes a minimum ninety percent destruction requirement on any boiler used to destroy waste VOC.

Pfizer is required to comply with subsection 22a-174-20(ee) of Connecticut's regulations by December 31, 1987, which is the final compliance date of the regulation.

EPA has reviewed State Order No. 8021 and has determined that the level of control required by this Order represents RACT for Pfizer.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on (60 days from today).

### Final Action

EPA is approving Connecticut State Order No. 8021 as a revision to the Connecticut SIP. The provisions of State Order No. 8021 define and impose RACT on Pfizer to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to

relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 29, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

October 4, 1989.

#### Paul G. Keough,

Acting Regional Administrator, Region I.

Subpart H, part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 40-[AMENDED]

#### Subpart H-Connecticut

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370 is amended by adding paragraph (c)(52) to read as follows:

### § 52.370 Identification of plan.

(c) \* \* \*

(52) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 7 and August 30, 1989.

(i) Incorporation by reference.
(A) Letter from the Connecticut
Department of Environmental Protection
dated February 7, 1989 submitting a
revision to the Connecticut State
Implementation Plan.

(B) State Order No. 8021 and attached Compliance Timetable, and Appendix A (allowable limits on small, uncontrolled vents and allowable outlet gas temperatures for surface condensers) for Pfizer, Incorporated in Groton, Connecticut. State Order No. 8021, Compliance Timetable and Appendix A were effective on December 2, 1988.

(C) Letter from the Connecticut
Department of Environmental Protection
dated August 30, 1989 and reorganized
Appendix C (fugitive leak detection
program) and Appendix D (operation
and maintenance program for pollution

abatement equipment) to State Order No. 8021. Appendices C and D were effective on December 2, 1988.

(ii) Additional materials

(A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 89-28034 Filed 11-29-89; 8:45 am] BILLING CODE 6560-50-M

#### 40 CFR Part 799

[OPTS-42008F; FRL 3668-2]

RIN 2070-AB94

#### Unsubstituted Phenylenediamines; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors of ortho-phenylenediamine (o-pda; CAS No. 95-54-5), meta-phenylenediamine (m-pda; CAS No. 108-45-2), paraphenylenediamine (p-pda; CAS No. 160-50-3) and the sulfate salts of m-pda (mpda.H2 SO4; CAS No. 54-17-08) and ppda (p-pda.H2 SO4; CAS No. 1824-57-751 to perform testing for neurotoxic effects, chemical fate, and aquatic toxicity. Manufacturers and processors of m-pda and the sulfate salt of m-pda are also required to perform testing for mutagenic effects in the sex-linked recessive lethal and bone marrow cytogenetics assays. The results of human health, chemical fate, and aquatic toxicity testing will determine additional testing for these effects. DATES: This rule shall become effective on January 16, 1990. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time on December 26, 1989.

## FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 544-

SUPPLEMENTARY INFORMATION: This action is in response to the Interagency Testing Committee's (ITC) designation of the phenylenediamine (PDA) chemical category for health and

0551.

environmental effects testing (45 FR 35897, May 28, 1980).

#### I. Introduction

### A. Test Rule Development Under TSCA

This final rule is part of the overall implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat 2003 et seq., 15 U.S.C. 2601 et seq.) which contains authority for EPA to require the development of data relevant to assessing the risk to human health and the environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules, which were published in the Federal Register of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

#### B. Regulatory History

The ITC designated the PDA category, consisting of 50 chemicals, for consideration for testing for health and environmental effects in its Sixth Report, published in the Federal Register of May 28, 1980 (45 FR 35897).

EPA issued an Advance Notice of Proposed Rulemaking (ANPR) for 13 of the high production PDA's, published in the Federal Register of January 8, 1982 (47 FR 973). Subsequently EPA issued a TSCA section 8(a) manufacturers' reporting rule on June 22, 1982 (47 FR 26992), and a section 8(d) health and safety data reporting rule published in the Federal Register of Sept. 2, 1982 (47 FR 38780), which included all of the PDA's recommended by the ITC.

After reviewing comments submitted in response to the ITC's recommendation, the ANPR, the section 8(a) and 8(d) rules, and data from the public record, EPA issued a notice, published in the Federal Register of January 30, 1985 (50 FR 472), stating that the PDA category had been subdivided into three subcategories: (1) Five unsubstituted PDA's (hereafter "pda's") (2) eight toluenediamines, and (3) 34 PDA's not subject to testing. EPA then issued a proposed test rule (NPRM) for the unsubstituted pda's under section 4(a) of TSCA published in the Federal Register of January 6, 1986 (51 FR 472). The NPRM proposed testing of o-, m-, and p-pda for aquatic oxidation rate and toxicity to aquatic organisms and testing of m-pda for mutagenicity in the Drosophila sex-linked recessive lethal

(SLRL) test. EPA subsequently extended the comment period an additional 30 days (51 FR 7593, March 5, 1986). No new data have been received for the 34 subcategory 3 chemicals which would change EPA's decision not to require testing of these chemicals at this time. The toluenediamines are being considered for separate rulemaking. EPA concluded from its analysis of public comments that the NPRM should be modified, and therefore issued its proposed modifications for public comment published in the Federal Register of January 14, 1988 (53 FR 913). The modified NPRM proposed that acute neurotoxicity testing, namely the functional observation battery and the motor activity tests, be added for all three isomers. Positive results lasting more than 24 hours would trigger subchronic neurotoxicity testing and neuropathological examination. EPA also proposed that mutagenicity testing of m-pda be expanded to include, in addition to the previously proposed Drosophila sex-linked recessive lethal (SLRL) assay, the in vivo mammalian bone marrow cytogenetics testchromosomal analysis (MBMC) in the mouse. Positive results from the SLRL could trigger the mouse specific locus test. A positive MBMC would trigger a dominant lethal test in the mouse, which if positive, would trigger a heritable translocation test in the same species. EPA further noted that positive Chinese hamster ovary test (CHO) data identified as a result of the public comments was sufficient to trigger an oncogenicity bioassay. The modified NPRM also retained the original proposal that chemical fate testing be conducted for all three isomers. It proposed that the acute aquatic toxicity testing of o- and p-pda with rainbow trout, Daphnia and Gammarus be condensed into one tier and that the number of acute-test species be reduced. The results of these acute aquatic tests would be used to determine whether chronic toxicity testing would be triggered and to identify the most sensitive vertebrate and/or invertebrate in which to conduct the chronic testing. The proposed chronic testing included the fish partial life-cycle flow-through test and the invertebrate life-cycle flowthrough test in Daphnia magna. m-Pda would be retested with the aphnia life-cycle test.

As stated in the proposed rule, EPA expects the sulfate salts of p-pda and m-pda to produce substantially the same toxicological effects as their respective free bases. The salts that are known to have been produced and that were cited by the ITC include p-pda. H<sub>2</sub> SO<sub>4</sub> (CAS No. 1624-57-75) and m-pda. H<sub>2</sub> SO<sub>4</sub> (CAS

No. 54-17-08). Accordingly, EPA is making the findings for the sulfate salts, as well as their respective free bases. Thus, the final rule requires manufacturers and processors of m-pda and the sulfate salt of m-pda to conduct all of the testing of m-pda or its salt as required by this rule, and manufacturers and processors of p-pda and the sulfate salt of p-pda to conduct all the testing of p-pda or its salt required by this rule. Hereafter, when this preamble refers to m-pda or p-pda, the salts of m-pda and p-pda are also meant to be included, except in Unit III.C when actual test substances are specified.

#### II. Public Comment

Comments in response to the modified NPRM for pda's were received from E. I. DuPont de Nemours, Inc. (DuPont) (Ref. 9) and the Neurobehavioral Toxicity Test Standard Committee (NTTSC), Psychopharmacology Division of the American Psychological Association (Ref. 19). These comments and EPA's responses to these comments are summarized below.

### A. Exposure Potential Under TSCA Section 4(a)(1)(A)

Dupont argued that industry has supplied enough information to show that workplace exposure to the pda's is in the range of 0.01 to 0.03 mg/m³, and that protective clothing and face masks are worn by people handling any of the isomers (Ref. 9). This level is below the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) of 0.1 mg/m³ for p-pda. Consequently, there is no evidence of exposure under TSCA section 4.

EPA acknowledges that workplace levels of pda's may vary from 0.01 to 0.03 mg/m3, and that workers involved with the manufacture of the pda's may wear or may not wear the protective clothing described by DuPont (Ref. 20). However, EPA notes that users of mand p-pda reported exposure levels from "nil" to 1.5 mg/m3 and that one user of m-pda provided an unsubstantiated estimate for shipping-handling exposure of 50 mg/m³ (Ref. 20). The ACGIH TLV of 0.1 mg/m³ to skin is "sufficiently low to minimize the number of persons who become sensitized (to p-pda) but it is recognized that the limit is not low enough to prevent exacerbation of asthma in those already sensitized to ppda" (Ref. 21). The TLV does not address exposure to either o- or m-pda nor does a TLV based on sensitization data address EPA's concern for potential oncogenic effects from exposure to m-pda or potential

neurotoxic effects from exposure to p-, o-, or m-pda. Consequently, there is no way to ascertain the actual risk of exposure at these levels until testing is conducted.

In addition to the 817 people reported by DuPont to be potentially exposed to one or more of the three isomers during their uses (Ref. 20), the National Occupational Exposure Survey (Ref. 1) reports that as many as 59,483 workers in 6,187 plants may be exposed to at least one of the pda's. Hence, EPA believes that exposure to pda's may occur during processing and use, as well as at least occasionally during manufacture, and that this potential exposure is sufficient to support EPA's section 4 findings. Because EPA is concerned about oncogenic and neurotoxic effects, there is an adequate basis for the finding that manufacturing, processing and use of pda's may present an unreasonable risk of injury to human health.

#### B. Health Effects Hazards Potential

1. Neurotoxicity. The neurotoxicity testing proposal in the modified NPRM generated opposing responses from NTTSC and DuPont. NTTSC agreed with EPA's proposal for neurotoxicity testing, and recommended that motor activity data be collected as part of the functional observation battery (Ref. 19). NTTSC also suggested that an evaluation of schedule-controlled operantbehavior, visual impairment, and kindling behavior (electrochemical measurement of seizure potential) would provide better baseline neurotoxicity data for the pda's. NTTSC volunteered to help EPA develop experimental procedures to measure these effects.

EPA agrees with NTTSC that both motor activity and functional observation battery should be included in the neurotoxicity testing program. EPA agrees that the testing program does not include measures of "higher cognitive functioning (e.g., schedulecontrolled operant behaviors)." The effect of pda's on "cognitive functioning" has not been adequately characterized, yet concern for this effect still exists. Schedule-controlled operant behavior (SCOB) testing is not being required at this time. However, because of the concerns raised in the public comments, data received from the required testing will be reviewed for evidence of potential effects on cognitive functioning. A public program review will be initiated to determine whether to require SCOB testing according to the test standard in 40 CFR

The pda data provide some evidence that exposure to pda's may produce

visual disturbances. It is not clear that these effects represent a direct effect on the eye. Von Oettingen (Ref. 2) concluded that edema around the head was more likely due to vascular changes than to a direct effect upon the nerve. Consequently, EPA does not believe sufficient justification exists to require visual impairment testing.

EPA agrees with NTTSC that the proposed testing does not adequately examine the potential alterations in seizure susceptibility nor does it assess the effects of pda's on kindling behavior. EPA also agrees that exposure to pda's may increase seizure potential. However, EPA is not requiring that these tests be conducted initially.

DuPont criticized the neurotoxic effects testing proposed in the modified NPRM as inappropriate, asserting that adequate, modern testing data do not support the central nervous system (CNS) effects observed in the turn-ofthe-century, anecdotal reports cited in the modified NPRM, and that adequate consumer/worker controls are already

in place (Ref. 9).

EPA agrees with DuPont that the evidence presented by NTTSC in its response to the NPRM (51 FR 472), and discussed in the modified NPRM (53 FR 913), did not definitely prove neurotoxic effects, nor did it demonstrate a lack of neurotoxic effects from exposure to pda's. Available literature shows a consistent pattern of neurobehavioral effects. While the nervous system cannot be determined with certainty to be the primary target for these effects, this possibility cannot be excluded. Convulsions after treatment with pda's have consistently been reported since the turn of the century in many animal species, and these data imply a direct neurological effect. Although convulsions were reported at lethal concentrations, there is concern that subconvulsive concentrations may pose a health risk. The repeated administration of convulsive agents at subconvulsive dose levels can result in the development of a permanent state of seizure susceptibility (Ref. 3). Further concern is indicated by studies which demonstrate that a single superconvulsant exposure in the developing organism can increase seizure susceptibility later in the adult (Ref. 4); the immature brain may be more vulnerable to seizures than the adult brain. Many neurobehavioral effects for such convulsants as picrotoxin, bicuculline, and carbolines have been reported at subconvulsant concentrations (Ref. 5). These data suggest that dermal exposure to pda's may cause seizures and neurological damage. EPA believes that the data

leave sufficient uncertainty as to neurotoxic effects to justify neurotoxic effects testing for all three isomers.

When all of the required neurotoxicity testing data have been received by EPA, the data will be reviewed and a public program review will be initiated. If EPA determines, from its review of the data developed by this rule, that additional testing is warranted, EPA will issue a subsequent notice proposing testing for seizure potential or other effects.

2. Mutagenicity. DuPont argued that mutagenic effects of pda's are adequately characterized. Comments submitted in rulemakings for other section 4 chemicals state that EPA's proposed mouse specific locus testing and the heritable translocation testing cannot be done. DuPont pointed out that the notice failed to identify whether a visible or biochemical specific locus test would be used, that the micronucleus test is more economical than the bone marrow testing, and that the heritable translocation test and bone marrow testing could effectively be done in the same animals, if EPA continues to require these tests. DuPont questioned the applicability of the sex-linked recessive lethal test (SLRL) for predicting genetic effects in mammals.

EPA has proposed separately to amend the requirement for the mouse visible specific locus test (MVSL; 53 FR 51847, December 23, 1988), for proposed and final test rules promulgated under section 4(a) of TSCA. EPA is proposing to allow test sponsors for this test rule to choose either the MVSL or the mouse biochemical specific locus test (MBSL), proposed under 40 CFR 798.5195, to test for heritable mutations in mammals. EPA believes that the MBSL and MVSL are comparable tests and are acceptable for detecting this endpoint in mammals. EPA is proposing a reporting requirement of 51 months for the completion of testing for either the MVSL or MBSL once triggered. If the MVSL proposal becomes final, it will apply to all existing and prospective section 4 test rules, including this rule for pda's.

If the specific locus test is triggered, selection of route of exposure will be decided as part of the program review of the required mutagenicity testing.

EPA agrees with DuPont that the mouse micronucleus assay would provide useful information on the mutagenic potential of m-pda, and is therefore allowing this requested change. EPA is also requiring that m-pda be tested in the in vivo mammalian bone marrow cytogenetics test: Micronucleus assay (40 CFR 798.5395), rather than the

MBMC chromosomal analysis test in the

modified pda's proposal.

The available data on mutagenic potential of the pda's indicate that these chemicals have potential effects on the gonadal tissue in mammals (Refs. 6 and 7). The SLRL assay cannot be extrapolated to man and the data from this assay are not intended to be used in this way. SLRL results will be taken as an indication of the ability of m-pda to interact with gonadal DNA to induce heritable mutations in non-mammalian species. These results will be incorporated into the body of mutagenicity data examined at the program review stage of testing, as described in the modified NPRM.

3. Oncogenicity. DuPont argued that sufficient information already exists to determine the potential cancer risk from exposure to m-pda and that further testing is unnecessary. DuPont also reported that correspondence with Dr. M. Matsuyama, director of the Japanese bioassay on m-pda, has revealed negative test results. Dr. Matsuyama has forwarded a copy of the published bioassay results to EPA (Ref. 8). EPA is reviewing the data included in the Japanese study and this information will be included in the total body of information reviewed by EPA when EPA decides whether oncogenicity testing is to be initiated.

In the proposed rule, EPA proposed that oncogenicity testing would be triggered from positive SLRL results (51 FR 472, 476 & 493). In the reopening of comments, EPA noted that oncogenicity testing has already been triggered from a positive CHO assay (53 FR 913, 914). Other language in the document suggested that other positive mutagenicity tests would trigger oncogenicity testing (53 FR 913, 921). EPA also noted that, although oncogenicity testing had been triggered and that oncogenic potential for m-pda was inadequately characterized, a review of all scientific evidence would be completed before oncogenicity testing would be initiated (53 FR 913, 914). DuPont questioned the applicability of the SLRL for predicting oncogenicity. EPA reiterates that the oncogenicity test has been triggered by existing mutagenicity data; therefore SLRL data are not needed for purposes of an oncogenicity trigger. However, all mutagenicity data will be part of the scientific evidence reviewed by EPA to determine whether oncogenicity testing shall be initiated.

Regrettably a typographical error was perpetuated in both the proposed rule and the reopening of comments. EPA intended to propose oncogenicity testing (40 CFR 798.3300) rather than combined chronic toxicity/oncogenicity testing (40 CFR 798.3320). However, in both documents, required oncogenicity testing is described as being conducted in accordance with 40 CFR 798.3320 (51 FR 472, 476; 53 FR 913, 921). These tests differ in numbers of required test species, duration of testing, and measured endpoints and 40 CFR 798.3320 does not adequately address the oncogenic potential of m-pda at this time. Therefore, although EPA did make the finding that oncogenicity testing is necessary (if indicated by the weight of evidence review after completion of the SLRL). EPA is not specifying the test standard in this rule. If oncogenicity testing is indicated, EPA will publish a Federal Register notice of the proposed oncogenicity test standard for comment.

#### C. Chemical Fate and Aquatic Toxicity

1. Indirect photolysis. DuPont argued that the chemical fate data collected were state-of-the-art, and any additional analytical exercise requiring identification of break-down products would be very costly exploratory research and consequently inappropriate for section 4 rulemaking. DuPont argued that EPA presented inadequate arguments for use of humic acids in the testing and that EPA's explanation for rejecting the Delaware River data was unsatisfactory.

EPA agrees with DuPont that the analysis of break-down products would be very costly; therefore, EPA is not requiring chemical analysis beyond that needed to document the concentrations of the pda's in the test solutions as required in the test guidelines.

ÉPA maintains that indirect photolysis testing is necessary and that including humic acids in the test system is necessary to adequately complete this testing. DuPont states that "DuPont, with EPA's approval and participation, designed studies in 1984 and 1985 to determine the oxidative half-lives of the pda's. These studies sought information both about environmental disappearance of pda's and the mechanisms of pda toxicity. DuPont completed these studies and performed additional work to provide the EPA with more information than it had originally requested..." (Ref. 9). EPA notes that discussions with

EPA notes that discussions with DuPont on the oxidation rate studies occurred in 1984, prior to the onset of the studies referenced by DuPont in their comments. Repeated efforts were made by EPA to include DuPont in the development of the Indirect Photolysis Guidelines, so that DuPont's planned studies would follow EPA's protocol for the pda's (Refs. 10 and 11). DuPont contacted the individuals involved in

developing the guidelines (Ref. 12), but since the development of the indirect photolysis guidelines did not correspond with DuPont's testing schedule, the oxidation rate study was completed in accordance with DuPont's protocol (Ref. 12 and 13). Throughout these discussions, EPA reminded DuPont that the oxidation rate study must be environmentally relevant (Ref.10), and that EPA reserved the right to review both the protocol and the data generated for their relevance to EPA's needs (Refs. 10, 11, and 15). If the data met these needs. EPA could reconsider its proposed testing; if the data did not, EPA would proceed with the indirect photolysis requirement, including addition of humic acid to the testing solutions (Ref. 16). The modified NPRM presents EPA's rationale for requiring the indirect photolysis study and the reasons why the oxidation rate studies submitted by DuPont do not meet EPA's needs (53 FR 913, 916-917).

The additional work submitted by DuPont in response to the ANPR included a study measuring the disappearance rate of p-pda in Delaware River water. In addition to the concerns listed in the modified NPRM, the following conditions have been identified as unacceptable: (1) Although DuPont's report implied that molecular oxygen is intimately involved in the oxidation of p-pda, documentation of molecular oxygen depletion was not included in DuPont's report; (2) the study report did not document quality control; and (3) the composition of the test water was unknown. Because of these deficiencies, EPA has not modified its decision to require the indirect photolysis testing.

2. Aquatic toxicity. DuPont argued that the aquatic toxicity tests submitted to EPA were reliable because the data were collected according to EPA-approved protocols, that chemical detection levels were state-of-thescience, that flow-through testing would not improve data reliability, that EPA did not provide adequate arguments for the inadequacy of the chronic Daphnia test for m-pda, and that Gammarus is not a good test organism (Ref. 9).

EPA approved DuPont's protocols prior to the onset of the 1985 studies in Daphnia, fathead minnows, and algae with acceptance of study results being contingent upon EPA's review (Ref. 18). In the modified NPRM, EPA reported that these studies were flawed. EPA test guidelines require flow-through testing for chemicals that may hydrolyze, oxidize, volatilize, or biodegrade to maintain constant chemical concentrations throughout the duration

of the experiment. Pda's are expected to oxidize. EPA acknowledges that DuPont used state-of-the-science analytical techniques to determine pda concentrations in the test solutions: however, constant chemical concentrations were not maintained in the tests submitted by DuPont. EPA has chosen not to require the fathead minnow and daphnid acute toxicity tests to be repeated; these data will be used in combination with the acute flowthrough rainbow trout and Gammarus studies to determine the most sensitive. species for testing in the fish partial lifecycle test and to assess the acute hazard of pda's to aquatic organisms.

The chronic Daphnia test lacks adequate documentation for chemical concentration measurements. EPA acknowledges that DuPont used stateof-the-science analytical techniques to determine m-pda concentrations in the test solutions. However, this test is a static-renewal test, EPA guidelinesrecommend that test concentrations should be measured, at a minimum, in each chamber before the test and in each chamber on 7, 14, and 21 days of the test to determine actual chemical concentrations being tested. DuPont's study does not identify whether test chamber concentrations were measured before or after the daphnids were exposed to the chemical solution. The test concentrations also varied from 22.5 to 66.7 percent of the nominal concentrations, a variation EPA believes could have been reduced by conducting a flow-through assay. However, EPA has chosen not to require repetition of this study. The data will be combined with the fathead minnow and rainbow trout partial life-cycle test results to assess the long-term hazard of m-pda to aquatic organisms.

EPA disagrees with DuPont that Gammarus testing is not well documented. Gammarus is a good test organism because it provides data for response of amphipods to chemical toxins, has shown comparability with daphnids in response to toxic stresses, and sometimes is a more sensitive species than Daphnia.

EPA is, therefore, requiring aquatic toxicity testing according to the testing scheme presented in the modified NPRM. All three isomers shall be tested in the rainbow trout and Gammarus acute tests. Since the daphnid and fathead minnow LC<sub>50x</sub> for p-pda are less than 1 mg/L and for o-pda the daphnid LC<sub>50</sub> is less than 1 mg/L, testing for p-and o-pda will proceed to the daphnid life-cycle and the fish partial life-cycle test in the more sensitive species of rainbow trout or fathead minnow. For

m-pda, a fish partial life-cycle test shall be conducted because of 1985 data showing the maximum acceptable toxicant concentration (MATC) to be less than 0.1 mg/L. The results of the rainbow trout acute testing will be compared to the fathead minnow acute toxicity data to determine the more sensitive species for testing m-pda. Chemical-specific sensitivity of fish to the pda isomers may provide results requiring testing of the three isomers in different fish species. Although the aquatic invertebrate acute testing will provide needed data measuring species sensitivity to pda's, EPA chronic invertebrate test guidelines are available only for daphnids. Consequently, all chronic aquatic invertebrate testing is being required in Daphnia magna.

3. Reporting deadlines. DuPont found the reporting deadlines unrealistic, stating they fail to allow adequate time for critical administrative paths involved in the proposed tiered testing. However, insufficient evidence was presented to show that pda's present unique qualities should cause EPA to alter the reporting requirements proposed in the NPRM and modified NPRM. Therefore, the required reporting deadlines will remain the same as required for other section 4 final rules.

4. Cost of testing. DuPont disagreed with EPA's estimated testing cost. DuPont argued that actual testing costs would total approximately \$1 million more than EPA's estimate. EPA has evaluated DuPont's submission and finds it difficult to determine the differences in the costs since DuPont did not provide the rationale for its estimate. For all three isomers, DuPont estimated the partial life-cycle test in rainbow trout to be \$30,000 and \$120,000. oxidative half life and oxidative byproduct assays \$100,000 and \$200,000. and chronic neurotoxicity test \$540,000. EPA's estimated price range for the required rainbow trout partial life-cycle. assays for all three isomers is \$54,000 to 120,000 and for the subchronic neurotoxicity testing \$285,000. EPA is not requiring chronic neurotoxicity testing at this time. The required indirect photolysis testing for all isomers is estimated to be \$15,000 to \$18,000. However, since publication of the modified NPRM, the estimated cost of the mouse biochemical specific locus test has been updated to between \$350,000 and \$600,000. EPA's total estimated cost for testing would therefore increase to \$1.8 to \$2.6 million, approaching DuPont's cost estimation. EPA believes that this cost does not impose an excessive economic burden

upon the pda industry (see Unit IV of this preamble).

III. Final Health and Environmental Effects Test Rule for Unsubstituted Phenylenediamines

A. Findings

EPA is basing the final health and environmental effects testing requirements on the authority of section 4(a)(1)(A) of TSCA.

1. Health effects testing. EPA finds that the manufacture, processing, and use of m-pda and m-pda.H2SO4 may present an unreasonable risk of mutagenic and oncogenic effects, and that manufacture, processing, and use of m-, o-, p-pda, m-pda.H2SO4, and ppda.H2SO4 may present an unreasonable risk of neurotoxic effects in humans because (1) as many as 59,483 workers in 6,187 plants may be exposed during manufacture, processing and use to at least one of the three isomers (Ref. 1); and (2) for m-pda, a potential genotoxic, oncogenic and neurotoxic hazard exists. and for o-pda and p-pda a potential neurotoxic hazard exists from this exposure. Under section 4(a)(1)(A)(ii). EPA also finds that there are insufficient data to reasonably predict such effects on human health from the manufacturing, processing, and use of these pda's. Under section 4(a)(1)(A)(iii), EPA finds that testing of these pda's is necessary to develop data for potential genotoxic, neurotoxic, and oncogenic hazards to determine whether manufacture, processing, or use of pda's does or does not present an unreasonable risk of injury to human

In this rule EPA finds that testing is necessary to determine the potential oncogenic hazard from exposure to mpda. A determination of whether oncogenicity testing will be initiated and the required test standard for testing for oncogenic effects will be included in the weight-of-evidence review. If such testing is indicated, EPA will publish this determination and propose a test standard for comment in a separate Federal Register notice.

a. Mutagenicity. The finding that m-pda "may present an unreasonable risk" of mutagenic toxicity is based on its positive Ames assays and a comparative study which showed m-pda to be the most potent mutagen of 11 aromatic amines tested (51 FR 472, 474), positive results in the in vivo Chinese hamster ovary chromosomal aberration test, and inhibition by m-pda of mouse testicular cell DNA synthesis in vitro [53-FR 913, 914].

b. Neurotoxicity. The finding that these pda isomers "may present an unreasonable risk" of neurotoxicity is based on available literature reports of a consistent pattern of neurobehavioral effects resulting from exposure to pda's. These reports suggest that dermal exposure to pda's may cause seizures at very low levels, cause adverse physical and neurological effects and visual disturbances, and that subcutaneous injections cause clonic and tonic spasms indicating interference with brain metabolism. These data leave sufficient uncertainty and data gaps to justify neurotoxic effects testing for all three isomers (53 FR 913, 916).

c. Oncogenicity. The finding that mpda may present an unreasonable risk of oncogenicity is based on a positive Chinese hamster ovary assay [53 FR 913,

914].

2. Chemical fate and environmental effects testing. EPA finds that pda's may present an unreasonable risk to the environment and that data are insufficient to determine aquatic toxicity of pda's. EPA finds that: (1) Concentrations of these pda's in the environment could reach levels which may be harmful to aquatic organisms and they may persist long enough that exposure to them may present an unreasonable risk of acute or chronic injury to aquatic organisms. In addition, the finding that these pda's "may present an unreasonable risk" to aquatic organisms is based upon the literature values for acute toxicity of these pda's to aquatic organisms, structure-activity relationships with toluenediamines (51 FR 472, 475), and aquatic toxicity data submitted by DuPont (53 FR 913, 916-918; Unit II.C of this preamble). (2) There are insufficient data to characterize potential environmental persistence and toxicity of these pda's. (3) Testing is necessary to characterize the environmental persistence and aquatic toxicity of m-, o-, and p-pda to help determine whether manufacturing, processing, or use of these pda's does or does not present an unreasonable risk of injury to the environment.

The reason chemical fate testing is being required is based upon the chemical properties of these pda's, biodegradation efficiency in activated sludge, structure-activity relationships with toluenediamines (51 FR 472, 475), and the uncertain environmental relevance of existing chemical fate data (53 FR 913, 916-917; Unit II.C).

#### B. Test Standards

1. Health effects. On the basis of the findings given above for health effects testing, EPA is requiring that m-pda be tested for mutagenic and oncogenic

effects, and that m-, o-, and p-pda be tested for neurotoxic effects, chemical fate, and aquatic toxicity. These tests shall be conducted in accordance with specific test guidelines set forth in 40 CFR parts 795, 796, 797, and 798. The tests are to be conducted in accordance with EPA's TSCA Good Laboratory Practice (GLP) Standards in 40 CFR part 792. On the basis of the findings presented in Unit III.A.1 of this preamble for human health effects, EPA is requiring that m-pda be tested for mutagenicity, using Drosophila sexlinked recessive lethal and mouse bone marrow micronucleus assays, as stipulated in 40 CFR 798.5275 and 798.5395, respectively. A positive bone marrow assay would trigger a dominant lethal assay in mice using the procedure in 40 CFR 798.5450. A positive result in the dominant lethal assay may, after a public program review, trigger the heritable translocation assay using the procedure in 40 CFR 798.5460. If the dominant lethal assay is negative, no further chromosomal aberration testing will be required for m-pda.

If the sex-linked recessive lethal assay is positive, after a public program review, the MVSL (40 CFR 798.5200) will be triggered. If the proposed amendment for the requirement of the MVSL is promulgated prior to the onset of the MVSL testing, the test sponsor may choose to conduct either the MVSL or the MBSL and shall notify EPA in writing of its choice in its first interim report. If the sex-linked recessive lethal assay is negative, no further genemutation testing will be required.

A determination of whether oncogenicity testing shall be initiated will be made at the completion of the mutagenicity testing program, at which time EPA will make a weight-of-evidence determination and conduct a public program review as referenced in Unit II.B.3 of this preamble. If the test must be initiated, EPA will propose the oncogenicity test standard for comment.

On the basis of the findings presented in Unit III.A.1 of this preamble for human health effects, EPA is requiring that m-pda, o-pda, and p-pda be tested for neurotoxic effects (acute functional observational battery and motor activity test) using the test guidelines in 40 CFR 798.6050 and 798.6200. Results of the acute testing may trigger subchronic neurotoxicity testing and neuropathological examination, as specified in 40 CFR 798.6050, 798.6200, and 798.6400.

EPA will hold a public program review prior to requiring the initiation of the mouse specific locus assay, the heritable translocation assay, the chronic oncogenicity assay, or additional neurotoxicity testing. Public participation in this program review will be in the form of written comments or a public meeting. A request for public comments or notification of a public meeting will be published in the Federal Register. Should EPA determine, from the available weight of evidence, that proceeding to the mouse specific locus test, heritable translocation test, oncogenicity test, or neurotoxicity testing is no longer warranted, EPA would propose to repeal that test requirement(s) and, after public comment, issue a final amendment to rescind the requirement(s). If oncogenicity testing must be initiated, EPA will propose the standard for conducting such testing in a separate Federal Register notice.

2. Chemical fate. On the basis of the reasons presented in Unit III.A.2 for chemical fate testing, EPA is requiring that m-,o-, and p-pda be tested in the indirect photolysis screening test as

specified in 40 CFR 795.70.

3. Environmental effects. On the basis of the justifications presented in Unit III.A.2 for environmental effects testing, EPA is requiring that acute toxicity testing of m-, o-, and p-pda be conducted on (1) rainbow trout (Salmo gairdneri) using the test guideline in 40 CFR 797.1400; and (2) in Gammarus sp. using the test guideline specified in 40 CFR 795.120. Since existing fathead minnow or daphnid acute toxicity test data or algal bioassay test data satisfy at least one of the decision criteria for each chemical, as defined in the NPRM and modified NPRM, fish partial life-cycle testing shall be conducted for o-, p-, and m-pda's as specified in 40 CFR 797.1600 in the more sensitive species of either rainbow trout (Salmo gairdneri) or fathead minnow (Pimephales promelas). The acute fish toxicity testing may provide data requiring the different isomers to be tested in different fish species in the fish partial life-cycle test. Daphnia magna life-cycle testing shall be conducted for o-and p-pda's as specified in 40 CFR 797.1330.

EPA is requiring that the TSCA health effects, chemical fate, and environmental effects test guidelines referenced in Unit III.B of this preamble, and subsequent revisions, shall be the test standards for the purposes of the required tests for pda's. The TSCA test standards for health effects, chemical fate, and aquatic toxicity specify generally accepted minimum conditions for determining health effects, chemical fate, and aquatic organism toxicities for substances such as pda's to which humans and the environment are expected to be exposed. EPA believes

that these test methods reflect the current state of the science for testing chemicals such as pda's for the specified endpoints.

#### C. Test Substance

EPA is requiring that m. o., and ppda, each of at least 98 percent purity, shall be used as the test substances. EPA expects that the free bases may not be sufficiently stable to be used as test substances for repeated dose health effects testing. Thus, as stated in the proposed rule (51 FR 472, 478) either the hydrochloride or sulfate salt of m-pda is an acceptable test substitute for the oncogenicity test because it should be more stable. In addition for this final rule, either the hydrochloride or sulfate salt of m-pda, p-pda, or o-pda is an acceptable substitute for the subchronic neurotoxicity testing if any of the free bases prove to be unstable under the conditions of the study. Such salts must be of at least 98 percent purity.

## D. Persons Required To Test

Section 4(b)(3)(B) specifies that the activities for which the EPA makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility of testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(b) of TSCA to include "import"). Processors are required to test if the findings are based upon processing. Both manufacturers and processors are required to test if the exposure giving rise to the potential risk occurs during use, distribution, or disposal.

Because EPA has found that manufacturing, processing, and using ppda, o-pda, m-pda, and the sulfate salts of p-pda and m-pda may result in an unreasonable risk to human health or the environment, EPA is requiring that persons who manufacture or process, or intend to manufacture or process, p-, o-,

m-pda and the sulfate salts of p-pda and m-pda at any time from the effective date of the final test rule to the end of the reimbursement period be subject to the testing requirements for the particular substance as required by this rule. The end of the reimbursement period will be 5 years after the last final report is submitted, or an amount of time equal to that which was required to develop data if more than 5 years, after the submission of the final report required under the test rule.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR part 790.

Processors subject to this rule, unless they are also manufacturers, are not required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. EPA expects that the manufacturers will pass an appropriate portion of the costs of testing on to the processors through the pricing of their products or other reimbursement mechanisms. If manufacturers perform all the required

tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, EPA will publish a separate notice in the Federal Register to notify processors to respond; this procedure is described in 40 CFR part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for unsubstituted pda's. As noted in Unit III. C. EPA is interested in evaluating the effects attributable to unsubstituted pda's and has specified relatively pure substances for testing.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR part 790 for single-phase rulemaking.

## E. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with its TSCA GLP Standards which appear in 40 CFR part 792.

In accordance with 40 CFR part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans within 45 days before initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. EPA's reporting requirements for each of the test standards are specified in Tables 1 and 2. Except as noted, progress reports for all tests are required at 6-month intervals starting 6 months from the effective date of the final test rule.

EPA is requiring that manufacturers of m-pda and its sulfate selt shall report the study results and submit interim reports according to the schedule on the following Table 1.

Table 1-Required Testing, Test Standards, And Reporting Requirements For meta-Phenylenediamine

Test Test standard (40 CFR section)	Reporting deadlines for final reports (months) <sup>1</sup>	Interim 6 month reports 16- quired
Health Effects Testing:		
1. Drosophila sex-linked recessive lethal (injection) 9 798.5275	12	1
2. Mouse visible specific locus test (gavage) <sup>8</sup>	51	8
3. Mouse bone marrow micronucleus assay (oral) § 798.5395	12	1
4. Dominant lethal assay § 798.5450	24	1
5. Heritable translocation *		3
6. Oncogenicity *	53	8
7. Acute functional observational battery (oral) § 799.6050	6	
8. Acute motor activity test (cral) § 798.8200	6	
9. Subchronic functional observational battery (oral) § 798.6050	18	2
10. Subchronic motor activity test (oral) § 798.6200	18	2

Table 1-Required Testing, Test Standards, And Reporting Requirements For meta-Phenylenediamine-Continued

Test	Test standard (40 CFR section)	Reporting deadlines for final reports (months) <sup>1</sup>	Interim 6 month reports re- quired
11. Neuropathology	§ 798.6400	18	2
Chemical Fate Testing:	§ 795.70	8	
Aquatic Toxicity Testing:  13. Acute rainbow trout (flow-through)	§ 797.1400	9	2

EPA is requiring that manufacturers and processors responsible for the

testing of p- and o-pda shall report the study results and submit interim reports according to the schedules in the following Table 2.

Table 2-Required Testing, Test Standards, And Reporting Requirements For ortho- And para-Phenylenediamine

Test	Test Standard (40 CFR)	Reporting deadlines for final reports (months) <sup>1</sup>	Interim 6 month reports re- quired
Health Effects Testing:			
1 Acute functional observational battery (oral)	§ 798.6050	6	-
Acute motor activity test (oral).     Subchronic functional observational battery (oral).      Subchronic motor activity test (oral)	798.6200	6	2
3. Subchronic functional observational battery (oral)	§ 798.6050	18	2
4. Subchronic motor activity test (oral)	§ 798.8200	18	2
5. Neuropathology	798.6400	18	-
Chemical Fate Testing:		8	
6. Indirect photolysis	§ 795.70		
Aquatic Toxicity Testing:		9	
7. Acute rainbow trout (flow-through)	§ 797.1400		
8. Acute Gammarus test (flow-through)	§ 795.120	9	2
9. Fish partial life-cycle test (flow-through) a	§ 797,1600	12	1
8. Acute Gammarus test (flow-through) 9. Fish partial life-cycle test (flow-through) 10. Daphnid life-cycle	§ 797.1330	12	-

TSCA section 14(b) governs EPA disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the Federal Register as required by section 4(d).

Persons who export a chemical which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR part 707. In brief, as of the effective date of this test rule, an exporter of mpda, o-pda, p-pda, or the sulfate salts of m-pda and p-pda must report the first annual export or intended export of the unsubstituted pda to any one country. EPA will notify the foreign country of the test rule for the chemical.

#### F. Enforcement Provisions

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce \*\*\*". EPA considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with the final rule for unsubstituted pda's. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data, interpretations and evaluations, and to determine compliance with TSCA GLP Standards and the test standards established in the

EPA's authority to inspect a testing facility also derives from section 4(b)(1)

<sup>&</sup>lt;sup>1</sup> Calculated from the effective date of final rule, except as noted.

<sup>2</sup> Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor(s) by certified letter or FEDERAL REGISTER notice that, following public program review of all the then existing data for m-pda, EPA has determined that the testing must be performed.

<sup>3</sup> Testing standard will be proposed in a separate FEDERAL REGISTER notice if oncogenicity testing is to be initiated. Reporting deadline will be calculated from the date of promulgation of test standard

<sup>4</sup> Test species to be determined from results from acute toxicity testing with rainbow trout and fathead minnow.

Number of months after effective date of the test rule.
 Test species to be determined from results from acute toxicity testing with rainbow trout and fathead minnow.

of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to \$25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions.

This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to \$25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

## IV. Economic Analysis of Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis (see supporting documentation (2)(a) in Unit VI.A of this preamble) that evaluates the potential

for significant economic impact on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of pda's: (1) Price sensitivity of demand, (2) market expectations, (3) industry cost characteristics, and (4) industry structure.

Total testing costs for the required testing for pda's are estimated to range from \$1.8 to \$2.6 million. To predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs (using a 7 percent cost of capital over a period of 15 years) range from \$197,000 to \$280,000. Based on 1984 production of 60 million pounds, the total unit test costs range from \$0.0033 to \$0.0047 per pound. These costs are equivalent to (percent of current price, current price in dollars per pound): p-pda: 0.08-0.12, \$4.00;m-pda: 0.16-0.23, \$2.07; o-pda: 0.1-0.14, \$3.25.

EPA believes that the potential for adverse economic impact resulting from the costs of testing is low. This conclusion is based on the following observations:

1. The annualized cost of testing is very low, at approximately 0.12-0.23 percent of product price in the upper-bound case,

Demand for pda's does not appear to be sensitive to a price increase in this range.

Refer to the economic analysis contained in the public record for this rulemaking for a complete discussion of test cost estimation and potential for economic impact resulting from these costs (see supporting documentation (2)(a) in Unit VI.A of this preamble).

## V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained

through the NTIS (PB 82-140773). On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing in this proposed rule.

EPA has reviewed the availability of contract laboratory facilities to conduct the neurotoxicity testing requirements (Ref. 17) and believes that facilities will be made available for conducting these tests. The laboratory review indicates that few laboratories are currently conducting these tests according to TSCA test guidelines and TSCA GLP Standards. However, the barriers faced by testing laboratories to gear up for these tests are not formidable. Laboratories will need to invest in testing equipment and personnel training, but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the C9 aromatic hydrocarbon fraction test rule at 40 CFR 799.2175. Pursuant to that rule, the manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP Standards.

## VI. Rulemaking Record

EPA has established a record for this rulemaking proceeding [docket number OPTS-42008F]. This record includes:

#### A. Supporting Documentation

- (1) Federal Register notices pertaining to this rule consisting of:
- (a) Notice of proposed rule on unsubstituted phenylenediamines (51 FR 472; January 6, 1986).
- (b) Notice of reopening comment period for unsubstituted phenylenediamines (52 FF 913; January 14, 1988).
- (c) Notice containing the ITC designation of the phenylenediamines category to the Priority List (45 FR 35897; May 28,1980).
- (d) Notices relating to EPA's health effects test guidelines and TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).
- (e) Notice of final rule on test rule development and exemption policy and procedures (49 FR 39772; October 10, 1984).
- (f) Notice of interim final rule on test rule development and exemption procedures (50 FR 20652; May 17, 1985). (g) Notice of final rule on data
- (g) Notice of final rule on data reimbursement policy and procedures (48 FR 31786; July 11, 1983).
- (h) Advance Notice of Proposed Rulemaking for the phenylenediamines (47 FR 973; January 8, 1982).
- (i) Notice of Agency decision not to require testing of certain phenylenediamines (50 FR 4267; January 30, 1985).
- (j) TSCA test guidelines final rule (40 CFR parts 796, 797, and 798: September 27, 1965)

49294

and modifications (52 FR 19056; May 20,

(k) Notice of extended comment period for ANPR (51 FR 7593; March 5, 1986).

(I) Notice of final rule on 2mercaptobenzothiazole (53 FR 34154; September 7,1988).

(m) Notice of final rule on C9 aromatic hydrocarbon fraction (40 CFR 799.2175) (2) Support Documents: consisting of:

(a) Economic analysis document. (b) Ethyltoluene and Trimethylbenzene technical support document.

(c) Cresols support document. (3) Communications before proposal

consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Records of telephone conversations. (c) Records or minutes of informal meetings

(d) Reports—published and unpublished factual materials.

#### B. References

(1) National Occupational Exposure Survey. Computer Print-out, U. S. Environmental Protection Agency, Washington, D. C. (October 3, 1988).

(2) Von Oettingen. US Public Health

Service Bulletin £271 (1941). (3) Cain, D.P. "Transfer of pentylenetetrazol sensitization to amygdaloid kindling." Pharmacology, Biochemistry and Behavior. 15:533-536 (1981)

(4) Gilbert, M.E. and D.P.Cain, "A single neonatal pentylenetetrazol or hyperthermia convulsion increases kindling susceptibility in the adult rat." Developmental Brain Research. 22:169-180 (1985).

(5) Sanger, D.J. "GABA and the behavioral effects of anxiolytic drugs." Life Science.

63:1503-1513 (1985).

(6) EPA. "Notice of proposed rule on unsubstituted Phenylenediamines." (51 FR

472; January 6, 1986).
(7) EPA. "Notice of reopening comment period for unsubstituted Phenylenediamines."

(53 FR 913; January 14, 1988).

(8) Amo, H., M. Matsuyama, H. Amano, et al. "Carcinogenicity and toxicity study of mphenylenediamine administered in the drinking-water to (C57BL/6 x C3H/He)F1 mice." Federation of Chemical Toxicology. 26(11/12): 893–897 (1988). (9) DuPont. "DuPont comments:

Unsubstituted Phenylenediamines: Proposed Rule (OPTS 42008D)." Washington, D.C.: Office of Toxic Substances, U.S. Environmental Protection Agency (February

26, 1988).

(10) DuPont. Phone Contact: T. Lewis to J. Helm (September 5, 1984).

(11) EPA. Phone contact: J. Helm to N.

Krivanek (October 4, 1984). (12) DuPont. Phone Contact: N. Krivanek to

P. Kennedy (September 12, 1984). (13) EPA. Phone Contact: J. Helm to K.D. Dastur (September 26, 1985).

(14) DuPont. Letter: K.D. Dastur to R. Northrop. "Phenylenediamines" (August

(15) EPA. Phone Contact: J. Helm to T. Lewis (November 14, 1984).

(16) EPA. Phone Contact: J. Helm to K.D. Dastur (August 28, 1985).

(17) EPA. Evaluation of TSCA test guidelines for neurotoxicity testing. Mathtech, Inc. Contract numbers 68-02-4235. Regulatory Impact Branch, Office of Toxic Substances, Washington, DC (April 4, 1987).

(18) EPA. Letter: EPA response to ecotoxicity protocols submitted by DuPont. From: Ralph Northrop, U. S. Environmental Protection Agency, to: K.D. Dastur, E.I. DuPont De Nemours & Company (November 14, 1984)

(19) NTTSC. "Comments on the proposed test rule for unsubstituted Phenylenediamines (FR 53: 913–922)." American Psychological Association, Psychopharmacology Division. Washington, DC, Office of Toxic Substances, US Environmental Protection Agency (February 25, 1988).

(20) E.I. DuPont de Nemours & Co., Inc. "Phenylenediamines: Response to Interagency Testing Committee (OPTS-42008)." Washington, DC, Office of Toxic Substances, U.S. Environmental Protection Agency (April 6, 1982).

(21) American Conference of Governmental Industrial Hygienists, Inc. "Documentation of the Threshold Limit Values Fourth Edition 1980: Supplemental Documentation 1982."

page, 330 (1982).

Confidential Business Information (CBI), while part of the record, is not available for public view. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE-G004, 401 M St. SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

## VII. Other Regulatory Requirements

#### A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least \$100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the

rulemaking record.

## B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 et seq. Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule will not have significant impact on a substantial

number of small businesses because: (1) they are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

#### C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 4,841 hours for m-pda, 3,227 hours for p-pda, and 6,454 hours for opda. The estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070-0033), Washington, DC 20503.

## List Of Subjects In 40 CFR part 799

Chemicals, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Testing.

Dated: November 2, 1989.

## Linda F. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 799 is amended as follows:

## PART 799-[AMENDED]

a. The authority citation continues to read as follows:

Authority: 15 U. S. C. 2603, 2611, 2625.

b. Section 799.3300 is added to read as

## § 799.3300 Unsubstituted phenylenediamines.

(a) Identification of test substance. (1) The unsubstituted phenylenediamines (pda's), para-phenylenediamine (p-pda, CAS No. 106-50-3), or its sulfate salt (ppda.H<sub>2</sub>SO<sub>4</sub>, CAS No. 1624-57-75), metaphenylenediamine (m-pda, CAS No. 108-45-2), or its sulfate salt (mpda.H2SO4, CAS No. 54-17-08), and

ortho-phenylenediamine (o-pda, CAS No. 95-54-5) shall be tested in accordance with this section.

(2) p-Pda, m-pda, and o-pda of at least 98 percent purity shall be used as the test substances. Either the hydrochloride or sulfate salt of m-pda shall be used as the test substances. Either the hydrochloride or sulfate salt of m-pda shall be used as a test substance in the oncogenicity test in paragraph (c)(2) of this section if the free base proves to be unstable under the conditions of this study. Either the hydrochloride or sulfate salt of o-pda, p-pda, or m-pda shall be used as a test substance in the 90-day subchronic neurotoxicity studies in paragraph (c)(3)(B) of this section if the free base proves to be unstable under the conditions of these studies. The salt(s) shall be of at least 98 percent

(b) Persons required to submit study plans, conduct tests, and submit data.

(1) All persons who manufacture (including import or by-product manufacture) or process m-pda or m-pda. H<sub>2</sub>SO<sub>4</sub>, or intend to manufacture or process m-pda or m-pda. H<sub>2</sub>SO<sub>4</sub>, after the effective date of this rule to the end of the reimbursement period shall submit letters of intent to test, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in paragraphs (c), (d), and (e) of this section, subpart A of this part, and parts 790 and 792 of this chapter for

single-phase rulemaking.

(2) All persons who manufacture (including import or by-product manufacture) or process p-pda, or p-pda.H<sub>2</sub>SO<sub>4</sub>, or intend to manufacture or process p-pda, or p-pda H<sub>2</sub>SO<sub>4</sub>, after the effective date of this rule to the end of the reimbursement period shall submit letters of intent to test, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in paragraphs (c)(3), (d), and (e) of this section, subpart A of this part and parts 790 and 792 of this chapter for single-phase rulemaking.

(3) All persons who manufacture (including import or by-product manufacture) or process o-pda, or intend to manufacture or process o-pda after the effective date of this rule to the end of the reimbursement period shall submit letters of intent to test, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in paragraphs (c)(3), (d), and (e) of this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking.

(c) Health effects testing—(1)
Mutagenicity testing—(i) Required
testing. (A) The sex-linked recessive
lethal (SLRL) assay shall be conducted.

by injection, in  $Drosophila\ melanogaster$  with m-pda in accordance with

\$ 798.5275 of this chapter.

(B) If the SLRL assay conducted pursuant to paragraph (c)(1)(i)(A) of this section is positive, the mouse visible specific locus test (MVSL) shall be conducted for m-pda by gavage in accordance with \$ 798.5200 of this chapter, if after public program review, EPA issues a Federal Register notice or sends a certified letter to the test sponsor(s) specifying that testing shall be initiated.

(C) The mouse bone marrow cytogenetics: micronucleus (MBMC) assay shall be conducted on m-pda in accordance with § 798.5395 of this

chapter.

(D) If the MBMC assay conducted pursuant to paragraph (c)(1)(i)(C) of this section is positive, the dominant lethal assay (DL) in mice shall be conducted on m-pda pursuant to § 798.5450 of this

chapter.

(E) If the DL conducted pursuant to paragraph (c)(1)(i)(D) of this section is positive, heritable translocation (HT) testing in the mouse on m-pda shall be conducted pursuant to § 798.5460 of this chapter, if after a public program review, EPA issues a Federal Register notice or sends a certified letter to the test sponsor(s) specifying that testing shall be initiated.

(ii) Reporting requirements. (A) The tests shall be completed and final reports for the SLRL assay and the MBMC assay shall be submitted to the EPA no later than 12 months after the effective date of this final rule.

(B) If required, the DL test shall be completed and the final report shall be received by EPA no later than 24 months after the effective date of this final rule.

(C) If required, the MVSL shall be completed and the final report shall be received by EPA no later than 51 months after EPA issues a Federal Register Notice or sends a certified letter to the test sponsor(s) identified under paragraph (c)(1)(i)(B) of this section specifying that testing shall be initiated.

(D) If required, the HT test shall be completed and the final report shall be submitted to EPA not later than 36 months after the date on which EPA notifies the test sponsor under paragraph (c)(1)(i)(E) of this section to

begin testing.

(E) Interim reports for the SLRL assay and MBMC are required at 6-month intervals beginning 6 months after the effective date of this section. If the DL is triggered, interim reports are required at 6 month intervals beginning with the date of initiation of the study.

(F) Interim reports for HT, and mouse specific locus studies are required at 6month intervals beginning with the date of notification by EPA that testing shall be initiated, and ending when the final report is submitted.

(2) Oncogenicity—(i) Required testing.
A 2-year dermal oncogenicity bioassay shall be conducted with m-pda if, after public program review, EPA issues a Federal Register notice specifying that the testing shall be initiated.

(ii) [Reserved]

(iii) Reporting requirements. (A) The final results and final report for the oncogenicity bioassay shall be submitted to EPA no later than 53 months after EPA issues a Federal Register notice or sends a certified letter to the test sponsor under paragraph (c)(2)(i) of this section specifying that the testing shall be initiated.

(B) Interim reports for the oncogenicity study are required at 6month intervals beginning 6 months after the date of notification by EPA that testing shall be initiated and ending when the final report is submitted.

(3) Neurotoxicity—(i) Required testing. (A) Acute neurotoxicity testing in the neurotoxicity functional observational battery (FOB) in accordance with § 798.6050 of this chapter, and the motor activity test (MAT) in accordance with § 798.6200 of this chapter, shall be conducted for o-, m-, and p-pda. The test chemicals shall be administered in a single oral dose. Clinical observations shall be made at a minimum of 1, 4, 24, and 48 hours and at 7 days after dosing.

(B) If neurotoxic effects are observed at 24 hours, or longer, during the testing conducted pursuant to paragraph (c)(3)(i)(A) of this section, then 90-day subchronic neurotoxic FOB and MAT tests shall be conducted in accordance with §§ 798.6050 and 798.6200 of this chapter, respectively, for each isomer showing such effects. At the end of these tests, the animals shall be sacrificed and the nervous tissue preserved and examined as described in the neuropathology test standard, § 798.6400 of this chapter.

(ii) Reporting requirements. (A) The acute neurotoxicity tests shall be completed and the final report submitted to EPA no later than 6 months after the effective date of this final rule. If triggered, the final report for the subchronic neurotoxicity testing and the neuropathological examination shall be submitted to EPA no later than 15 months after the effective date of this final rule.

(B) [Reserved]

(d) Chemical fate testing—(1) Indirect photolysis testing—(i) Required testing. Indirect photolysis studies shall be

conducted with p-, m-, and o-pda to determine the half-life in water of each of the three unsubstituted pda's in accordance with § 795.70 of this chapter.

(ii) Reporting requirements. (A) The final report shall be submitted to EPA no later than 8 months after the effective

date of the final rule.

(B) The final report shall include a calculation of the predicted environmental concentration (PEC), 100 x PEC, and 1,000 x PEC for each isomer. PEC shall be calculated by using results from the indirect photolysis studies and solving the following equations for the appropriate isomer: o-pda: PECo = 0.3629 + 1.0468 log t 1/2; m-pda: PECm = 0.6830 + 1.9702 log t 1/2; p-pda: PECp = 0.0085 + 0.0024 log t 1/2, where PEC is the predicted concentration in ppb and t 1/2 is the half-life for oxidation (i.e., indirect photolysis) expressed in minutes. PEC, 100 x PEC, and 1,000 x PEC shall be used in the decision logic described in paragraph (e) of this section.

(2) [Reserved]

(e) Environmental effects testing—(1)
Acute toxicity testing—(i) Required
testing. (A) Flow-through fish acute
toxicity tests in the rainbow trout
(Salmo gairdneri) shall be conducted
with o-, m-, and p-pda in accordance
with § 797.1400 of this chapter.

(B) Acute flow-through studies on the freshwater invertebrate Gammarus shall be conducted with o-, m-, and p-pda in accordance with § 795.120 of this

chapter.

(C) If the concentration affecting 50 percent of the population (LC60 or EC60) for any study conducted pursuant to paragraphs (e)(1)(i)(A) and (B) of this section is less than or equal to 100 X PEC, less than or equal to 1 milligram/ liter (mg/L), or less than or equal to 100 mg/L and shows indications of chronicity, chronic toxicity testing shall be conducted pursuant to paragraph (e)(2) of this section. Indications of chronicity shall be the following: for fish or aquatic invertebrates, the ratio of 24 hour/96 hour LC50s is greater than or equal to 2; for gammarids, the ratio of 24 hour/48 hour EC60, is greater than or equal to 2.

(ii) Reporting requirements. (A) The final report for acute toxicity testing shall be submitted to EPA no later than 9 months after the effective date of the

final rule.

(B) [Reserved]
(2) Chronic toxicity testing—(i)
Required testing. (A) A fish partial lifecycle flow-through test shall be conducted in the more sensitive fish species, either Pimephales promelas or Salmo gairdneri, with each isomer, o-,

m-, and p-pda, demonstrating an LC<sub>60</sub>, determined by testing of fish pursuant to paragraph (e)(1)(i)(A) of this section, equal to or less than 100 X PEC; or less than 1 mg/L; or less than 100 mg/L with indications of chronicity. Chronicity indicators are defined in paragraph (e)(1)(i)(C) of this section. Testing shall be conducted in accordance with § 797.1600 of this chapter.

(B) An invertebrate life-cycle flowthrough toxicity test shall be conducted in *Daphnia magna* for o- and p-pda in accordance with § 797.1330 of this

chanter

(ii) Reporting requirements. (A) The tests shall be completed and the final results shall be submitted to the EPA no later than 24 months after the effective date of the final rule.

(B) Progress reports shall be submitted at 6 month intervals after the effective date of the final rule.

(f) Effective date. (1) This rule is effective on January 16, 1990.

(2) The guidelines and test methods cited in this section are referenced as they exist on the effective date of the final rule.

[Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070–0033) [FR Doc. 89–27932 Filed 11–29–89; 8:45 am]

BILLING CODE 6560-50-D

#### **DEPARTMENT OF DEFENSE**

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 52

[Federal Acquisition Circulars 84-48 and 84-49]

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: For the purpose of annually revising 48 CFR Ch. 1 (Federal Acquisition Regulation), this document corrects two Federal Acquisition Circulars (FAC's) published in the Federal Register on Monday, June 12, 1989 (54 FR 25060) FAC 84—48 and on Tuesday, July 11, 1989 (54 FR 29278) FAC 84—49.

FOR FURTHER INFORMATION CONTACT:
Ms. Margaret A. Willis, FAR Secretariat,

Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC's 84-48 and 84-49 corrections.

SUPPLEMENTARY INFORMATION: In FR Doc. 89–13944 (FAC 84–48) beginning on page 25060, in the first column of page 25072, in amendatory instruction 29. the words "and by alphabetically adding the definition 'nonprofit organization' are corrected to read: "and by alphabetically inserting and revising the definition 'Nonprofit organization'".

In FR Doc. 89–16077 (FAC 84–49), beginning on page 29278, in the second column of page 29283, in amendatory instruction Number 41, the words "and by revising the first sentence in paragraph (c) of the clause, and the first sentence in paragraph (c) of the Alternate I" are corrected to read: "and by revising paragraph (c) of the clause and removing the first sentence of paragraph (c) of the Alternate I and-adding two new sentences".

## List of Subjects in 48 CFR Part 52

Government procurement.

Dated: November 22, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.
[FR Doc. 89-27841 Filed 11-29-89; 8:45 am]
BILLING CODE 6820-JC-M

## DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 11]

RIN 2127-AC53

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT. ACTION: Final rule.

summary: This notice further delays the effectiveness of the downward torque deflection requirements for external mechanical aiming of replaceable bulb headlamps (paragraph S7.7.5.1(a)), from December 1, 1989, to September 1, 1990. It is occasioned by comments in response to a request published on August 1, 1989 (54 FR 31687).

**EFFECTIVE DATE:** The rule establishing a new effective date of September 1, 1990, is effective November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA (202-366-5280). SUPPLEMENTARY INFORMATION: NHTSA published amendments to Federal Motor Vehicle Safety Standard No. 108, Lamps, Reflective Devices, and Associated Equipment, on May 9, 1989 (54 FR 20066). With the exception of two requirements for equipment marking, the amendments became effective 30 days after their publication in the Federal

With respect to the May 1989 amendments, the Managing Director of NHTSA announced that "Because of the need to relieve design restrictions and encourage innovation", good cause had been shown for an effective date earlier than 180 days after issuance of the rule, and that the effective date would be 30 days after publication. General Motors (GM) submitted a petition for reconsideration noting that paragraph S7.7.5.1(a) did not relieve design restrictions or encourage innovation for replaceable bulb headlamps. Instead, its downward torque deflection test imposed a new requirement for systems of replaceable bulb headlamps (though such a test has been applicable for some time to sealed beam headlamps). GM further argued that imposition of the requirement without sufficient lead time for manufacturers to design, validate, and adopt product changes is not in the public interest. It asked that an effective date of December 1, 1989, be established for the downward torque deflection. requirements of paragraph \$7.7.5.1(a) applicable to replaceable bulb headlamps. NHTSA granted its petition. and published an interim final rule amending paragraph S7.7.5.1(a) to specify an effective date of December 1. 1989 with respect to headlighting systems designed to conform to paragraph S7.5 (replaceable bulb headlamps) (54 FR 31587).

The notice of the interim final rule also asked for comments on whether the duration of the suspension of the effectiveness should be longer or shorter than December 1, 1989. Six comments were received in response to this request, from General Motors Corporation (GM), Volkswagen of America (VW), Chrysler Motors, Robert Bosch, GMBH, Koito Manufacturing Co., Ltd., and Motor Vehicle Manufacturers Association (MVMA).

These comments addressed not only the effective date but also the requirement itself. Chrysler believes that the requirement is premature until an appropriate test procedure has been developed, and incorporated into the standard. Koito requested that test procedures, especially regarding deflectometers, should be clarified to ensure repeatability of test results

between differing laboratories. MVMA submitted a similar comment. The agency concurs in these comments. This issue will be addressed in detail in a forthcoming notice responding to petitions for reconsideration of the May 1989 amendments. However, the agency does not concur with comments that the effective date should be suspended until the procedures have been implemented. Instead, it has decided to further postpone the effective date until a time subsequent to the amendments that will be made in response to the petitions for reconsideration, and in accordance with the comments received in response to the interim final rule.

The effective date of December 1, 1989, was supported by GM, who had requested it, and MVMA. As noted above, Chrysler viewed any effective date as premature until acceptable test procedures are established. Bosch opposed it on the ground that not all its headlighting systems complied with the requirement, and insufficient time remained to achieve compliance. It suggested making the requirement applicable "only to new designs which come into series production after December 1, 1989." VW asked that the effectiveness be deffered until September 1, 1990, to allow engineering changes necessary to conformance of certain Audi models that do not comply with \$7.7.5.1(a), and could not comply by December 1, 1989. It supports the September date as consistent with model year timing considerations. Koito recommended that the requirement apply only to "new vehicle models and that those should be limited for new vehicle models to be introduced on or after 1991." In response to these comments, the agency is further deferring the effective date of the requirement to September 1, 1990.

The publication of this rule affects none of the impacts of the final rule as discussed in the May 9, 1989 notice adopting amendments to Standard No. 108, or the Federalism assessment.

#### List of Subjects in 49 CFR Part 571

Imports, motor vehicle safety, motor vehicles.

In consideration of the foregoing, 49 CFR 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment is amended as follows:

#### PART 571-[AMENDED]

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.50.

#### § 571.108 [Amended]

2. In the lest sentence of section S7.7.5.1(a), the date "December 1, 1989" is revised to read "September 1, 1990".

Issued on November 27, 1989.

Jeffrey R. Miller,

Acting Administrator.

[FR Doc. 89-28000 Filed 11-27-89; 11:45 am] BILLING CODE 4910-59-M

#### **Urban Mass Transportation** Administration

49 CFR Part 665

[Docket No. 89-B]

RIN 2132-AA30

## **Bus Testing Program; Reopening of** Comment Period

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Interim final rule; reopening of comment period.

SUMMARY: On August 23, 1989, the **Urban Mass Transportation** Administration published interim procedures for its bus testing facility program. On behalf of the industry, the American Public Transit Association (APTA) has requested an extension of the comment period. UMTA agrees that additional time for comments would be helpful. Since the comment period ended on November 21, 1989, this document reopens the comment period for 90 days.

DATES: Comments must be submitted by February 28, 1990.

ADDRESSES: Comments should be addressed to: Urban Mass Transportation Administration, Department of Transportation, Office of Chief Counsel, Docket 89-B, 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

## FOR FURTHER INFORMATION CONTACT: For technical issues, Steven A. Barsony, Director, Office of Engineering Evaluations, Office of Technical Assistance and Safety, (202) 366-0090; for legal issues, Daniel Duff or Susan

Schruth, Office of Chief Counsel (202) 366-4011.

SUPPLEMENTARY INFORMATION: On May 25, 1989, the Urban Mass Transportation Administration (UMTA) published a notice of proposed rulemaking (NPRM) to implement section 317 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). Section 317 directs the Secretary of DOT (as delegated to UMTA) to establish a bus testing facility at Altoona, Pennsylvania, and provides that no

funds appropriated or made available under the Urban Mass Transportation Act, as amended, after September 30, 1989, may be used to purchase a "new bus model" unless a bus of such model has been tested at the facility.

At the time of the proposal, the agency indicated that it would issue interim procedures for the bus testing facility program in advance of final program regulations. On August 23, 1989, the agency issued these interim procedures to ensure timely implementation of STURAA's bus testing requirements.

Comments on the interim procedures were due on November 21, 1989. However, the American Public Transit Association had requested that UMTA extended this comment period for 90

days.

This bus testing program raises many complex issues. As we noted in the interim final rule, UMTA will consider all issues anew in the development of the final rule. Because this program is new in both type and scope for UMTA grantees, the agency believes it should give commenters maximum opportunity to comment.

Accordingly, in response to APTA's request and in view of the complex nature of this program, the agency has found reasonable cause for reopening the comment period of UMTA Docket 89–B until February 28, 1990.

Issued: November 24, 1989.

Roland J. Mross,

Deputy Administrator.

[FR Doc. 89-28062 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-57-M

#### **DEPARTMENT OF COMMERCE**

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 81133-9030]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce. ACTION: Notice of surf clam fishery closure.

SUMMARY: NOAA issues this notice to close the Nantucket Shoals Area surf clam fishery for the remainder of the 1989 fishing year. This action is required to prevent significant overharvest of the annual surf clam quota for that fishery. The intended effect is to provide brief advance notice of closure and then prohibit further harvest of the resource.

EFFECTIVE DATE: 0001 hours, December 1, 1989.

FOR FURTHER INFORMATION CONTACT: John G. Terrill, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, telephone 508-281-9252.

SUPPLEMENTARY INFORMATION:

Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at 50 CFR 652.22(d) a provision requiring the Secretary of Commerce to close any of the regulated fisheries if the Regional Director upon review of available information, including current and expected levels of fishing effort, determines that the fishery quota will be exceeded.

Landings for 1989 consistently have exceeded quarterly quotas established for the area. The expectation that harvest rates would decrease during the last quarter, as was experienced in the 1988 fishery, did not occur. The increased catch rates were further compounded by the closure (54 FR 33700, August 16, 1989 and 54 FR 47364, November 14, 1989) of the Georges Bank Area to the harvest of surf clams after paralytic shellfish poisoning was discovered to be present in surf clams. The closure increased effort in the Nantucket Shoals Area when vessels that normally would have worked the Georges Bank Area chose to work the Nantucket Shoals Area. Landings exceeded 50 percent of the fourth quarter quota on October 20, 1989, and it was necessary to impose trip landing limits in the Nantucket Shoals Area fishery (54 FR 47682, November 16, 1989) to slow the rate of harvest to match the remaining quota available.

Landings through November 17, 1989, totalled 203,000 bushels out of a total annual quota of 200,000 bushels mandating the Secretary to take action to close the area. A reporting lag also has been experienced for this fishery and the amount of overharvest may be significant. Any amount of quota overharvested during the 1989 fishery will be used to adjust the 1990 Nantucket Shoals Area quota by subtracting that amount from the annual quota and proportionately from the quarterly quotas as specified in § 652.21(b)(3).

The fishery will reopen on December 31, 1989, with the beginning of the new fishing year.

#### Other Matters

This action is taken under the authority of 50 CFR part 652 and is taken in compliance with Executive Order 12291.

## List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq. Dated: November 24, 1989.

Alan Dean Parsons,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-28033 Filed 11-29-89; 8:45 am] BILLING CODE 3510-22-M

#### 50 CFR Part 675

[Docket No. 90407-9170]

### Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce. ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of Alaska groundfish to the joint venture processing (JVP) portion of the domestic annual harvest (DAH). This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), is necessary to assure optimum use of groundfish in that area. It is a conservation and management measure intended to promote fishery objectives of the North Pacific Fishery Management Council.

DATES: Effective at 1:01 p.m., Alaska Standard Time on November 27, 1989. Comments will be accepted through December 12, 1989.

ADDRESSES: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802, or be deliverd to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

**SUPPLEMENTARY INFORMATION:** The FMP is implemented by rules appearing at 50 CFR 611.93 and Part 675.

Initial specification for DAH, DAP (domestic annual processing), and JVP for 1989 were published at 54 FR 3608. The same notice established a 15 percent non-specific reserve and then apportioned amounts from that reserve to JVP in order to provide bycatch amounts for JVP fisheries.

JVP amounts of Bering Sea subarea pollock, yellowfin sole, other flounders, Pacific cod, and rock sole were increased on September 3, 1989 (54 FR 37112, September 7, 1989) based on new information about DAP potential. On September 16 (54 FR 38686, September 20, 1989) the DAP for Atka mackerel was supplemented by 3,043 mt of the nonspecific reserve. On October 6 the DAP for Greenland turbot was supplemented by 1,200 mt and the JVP for arrowtooth flounder was supplemented by 2,000 mt from the non-specific reserve (54 FR 41977, October 13, 1939). On October 31, the DAPs for sablefish in the Bering Sea subarea and the Aleutian Island area subarea were supplemented by 420 mt and 510 mt, respectively, from the nonspecific reserve (54 FR 46619, November

On October 13, the Region completed a reanalysis of DAP pollock needs for 1989. The Region concluded that DAP Bering Sea subarea pollock would require supplementation by 21,000 mt before the end of the year, leaving only 6,000 mt in the non-specific reserve for possible transfer to JVP; and that 9.000 mt of DAP Aleutian subarea pollock, as well as 2,018 mt in the non-specific reserve, was excess to DAP needs. On November 9 (54 FR 47684, November 16, 1989), 4,500 mt of Aleutian Island subarea pollock DAP was reapportioned to IVP, and 2,500 of the non-specific reserve was transferred to the JVP for Bering Sea subarea pollock.

On November 9 (54 FR 47684), receipt by foreign vessels of pollock taken in directed fisheries in the Bering Sea subarea was prohibited. Later, joint venture representatives were advised by letter that the amount of pollock available for JVP in the Aleutian Islands subarea would be taken on November 19, and foreign vessels could no longer receive pollock after that date. This reapportionment of pollock to JVP rescinds those notices.

#### Reapportionment

The following actions listed in Table 1 are taken by this notice to apportion groundfish from the non-specific reserve to the BSA IVP: An amount identified as excess to DAP needs for Bering Sea subarea pollock, 3,500 mt, is apportioned to IVP for Bering Sea subarea for pollock, an amount identified as excess to DAP needs for Aleutian Islands subarea pollock, 2,518 mt, is apportioned to IVP for Aleutian Islands subarea for pollock. Also, 4,000 mt identified as excess to DAP needs for Aleutian Islands subarea pollock is transferred to the IVP for Aleutian Islands subarea for pollock. Therefore, pollock in the JVP fishery of the Aleutian Islands subarea is increased by a total of 6,518 mt.

In addition, JVP fisheries have experienced higher than anticipated catches of squid and "other species." Rather than require these categories to be discarded, as would occur if their JVP quotas were reached, the JVP for squid

is increased by 100 mt and that of "other species" by 500 mt, both by transferring said amounts from DAP. In both cases these amounts are excess to DAP needs in 1969.

## Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit domestic fishermen who otherwise would be required to terminate a fishery earlier than necessary. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

## List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 et seq. Dated: November 27, 1989.

#### David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

#### TABLE.—BERING SEA/ALEUTIANS REAPPORTIONMENTS OF TAC

[All values are in metric tons]

		Current	This action	Revised
Pollock (Bering Sea) TAC=ABC=1,340,000 Pollock (Aleutian Is) TAC=13,450 ABC=117,900 Squid TAC=1,000 ABC=10,000 Other species TAC=13,264 ABC=59,000 Total (TAC=2,000,000)	DAP	1,045,585 269,915 6,932 4,500 850 75 11,274 4,500 1,345,986 611,639	+3,500 -4,000 +6,518 -100 +100 -500 +500 -4,600 +10,618	1,045,585 273,415 2,932 11,018 750 175 10,774 5,000 1,341,386 622,257

[FR Doc. 89–28142 Filed 11–27–89; 5:11 pm] BILLING CODE 3510-22-M

## **Proposed Rules**

Federal Register

Vol. 54, No. 229

Thursday, November 30, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration** 

14 CFR Part 39

[Docket No. 89-NM-210-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires operational testing of fuel boost pump bypass valves, and provides an optional terminating modification. This action would require a one-time inspection of the bypass valves on airplanes that have been modified, and further modification, if necessary; and modification of those airplanes that have not been modified. This proposal is prompted by reports of unacceptable preloading in the fuel scavenge system components on airplanes on which the optional modification was accomplished. This condition, if not corrected, could lead to fuel line stress fractures causing fuel leakage within the main wing tanks, which could result in engine(s) power loss due to fuel starvation.

DATES: Comments must be received no later than January 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-210-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA,

Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-1969.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM–210–AD." The post card will be date/time stamped and returned to the commenter.

#### Discussion

On July 21, 1988, the FAA issued AD 88-01-06-R1, Amendment 39-5990 (53 FR 28859; August 1, 1988), to require operational testing of the fuel boost pump bypass values to remove accumulated water which could freeze and render the bypass value inoperative, That amendment allows optional termination of the required

operational testing if certain fuel system modifications, described in Boeing Alert Service Bulletin 737–28A1072, Revisions 2 or 3, are incorporated.

Since issuance of that AD, certain operators have reported that after incorporation of the terminating modification (detailed in the above Boeing Service Bulletin revisions), incidents of unacceptable preloading in the fuel scavenge system components have occurred on certain airplanes identified in the previously mentioned alert service bulletin as Group 1. This preloading condition, if not corrected, could lead to fuel line stress fractures causing fuel leakage withn the main wing tanks, which could result in engine(s) power loss due to fuel starvation.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–28A1072, Revision 4, dated August 7, 1989, which describes a modification to the fuel scavenge system components which prevents the accumulation of water and eliminates the potential for fuel tube preloading.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would supersede AD 88-01-06-R1 with a new airworthiness directive that would require a one-time inspection of the bypass valves on airplanes that have been modified in accordance with paragraph B. of AD 88-01-06-R1, to determine if preloading of the fuel scavenge system exists, and modification, if necessary. This proposal would also require all unmodified airplanes currently subject to the repetitive operational tests required by paragraph A. of AD 88-01-06-R1, to install the modification described in Revision 4 of the alert service bulletin; this modificatin would constitute terminating action for the repetitive operational tests.

There are approximately 500 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 200 airplanes of U.S. registry would be affected by this AD, that it would take approximately 19 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. There is no cost for modification parts. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$152,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

#### PART 39-[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 39-88-01-06-R1, Amendment 39-5990 (53 FR 28359; August 1, 1988), with the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Alert Service Bulletin 737–28A1072, dated August 27, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent engine fuel starvation resulting from main wing tank fuel scavenge system stress fractures or fuel boost pump bypass valves freezing, accomplish the following:

A. Prior to the accumulation of 150 flight hours after January 27, 1988 (the effective date of Amendment 39–5823, AD 88–01–06), and thereafter at intervals not to exceed 300 flight hours, perform an operational test of the bypass valves in accordance with Boeing Alert Service Bulletin 737–28A1072, dated August 17, 1987.

B. The operational tests required by paragraph A., above, may be terminated when the fuel system modifications, detailed in Boeing Service Bulletin 737–28A1072, Revision 2, dated February 18, 1988, or Revision 3, dated October 6, 1986, are installed.

C. For airplanes modified in accordance with paragraph B., above: Within one year after the effective date of this amendment, conduct an inspection of the fuel scavenge system for preloading, in accordance with Boeing Alert Service Bulletin 737–28A1072, Revision 4, dated August 7, 1989. If preloading is discovered in the fuel scavenge system, prior to further flight, modify in accordance with that service bulletin.

D. For all other airplanes: Within one year after the effective date of this amendment, modify the fuel boost pump bypass valves system in accordance with Boeing Alert Service Bulletin 737–28A1072, Revision 4, dated August 7, 1989. This modification constitutes terminating action for the repetitive operational tests required by paragraph A., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 17, 1989.

### Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-28009 Filed 11-29-89; 8:45 am] BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 89-NM-227-AD)

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

summary: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-8 series airplanes, which would require modification of the emergency lighting system. This proposal is prompted by reports that certain elements of the emergency lighting system fail to illuminate automatically when normal (i.e., the engine-driven generators) electric power is lost. This condition, if not corrected, could result in failure of the emergency lighting system to operate when required in an emergency situation.

DATES: Comments must be received no later than January 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-227-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

## FOR FURTHER INFORMATION CONTACT:

Mr. Peter Cuneo, Systems and Equipment Branch, ANE-173; telephone (516) 791-6427. Mailing address: FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

## SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to

the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-227-AD. The post card will be date/time stamped and returned to the commenter.

## Discussion

There have been reports that the emergency lighting system on the de Havilland Model DHC-8 series airplanes will not come on automatically if generator electric power (defined as "normal" electric power) is lost, as long as the right battery provides power to the right essential bus. This condition, if not corrected, could result in failure of the emergency lighting system to operate when required in an emergency situation.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin No. 8-33-17, dated August 25, 1989, which describes procedures for relocating the emergency lights circuit breaker from the right essential bus to the right

secondary bus.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the emergency lighting system in accordance with the service bulletin previously described.

It is estimated that 64 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average

labor cost would be \$40 per manhour. The required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$5,120.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

#### PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive.

Boeing of Canada, LTD., De Havilland Division Applies to de Havilland Model DHC-8 series airplanes, Serial Numbers 1 through 179, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished.

To ensure the proper operation of the emergency lighting system when required, accomplish the following:

A. Relocate the emergency lights circuit breaker on the circuit breaker panel from the right essential bus to the right secondary bus

and terminate a wire, in accordance with the Accomplishment Instructions of de Havilland Service Bulletin No. 8-33-17, dated August 25,

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, ANE-170, FAA, New England Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office, ANE-

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New

Issued in Seattle, Washington, on November 17, 1990.

## Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 89-28011 Filed 11-29-89; 8:45 am] BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 89-NM-132-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes, Serial Numbers 3 Through 119, Inclusive, With Modification No. 8/0467 Incorporated, and Equipped With **Eldec Proximity Switch Electronic** Control Unit (PSEU), P/N 8-410-3, 8-410-04, or 8-410-05

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM), reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 series airplanes, that would have required a modification of the landing gear control system which would terminate the need for certain pre-flight procedures required by an existing AD. This amended proposal would add Model DHC-8-103 series airplanes and a Proximity Switch Electronic Control Unit (PSEU) part number to the applicability statement, and would cite the latest revision to the service bulletin as the appropriate service information.

DATES: Comments must be received no later than January 9, 1990.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-132-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT:
Mr. C. Kallis, New York Aircraft
Certification Office, ANE-173, FAA New
England Region, 181 South Franklin
Avenue, Room 202, Valley Stream, New
York 11581; telephone (516) 791-6427.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposal rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact,

concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt for their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89–NM-132–AD." The post card will be date/time stamped and returned to the commenter.

#### Discussion

A proposal to amend Part 39 of the Federal Aviation Regulations, which would have revised AD 88-03-51, Amendment 39-5868 (53 FR 7348; March 8, 1988) to require modification of the landing gear control system on de Havilland Model DHC-8-100 series airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register on August 17, 1989 (54 FR 33934). That NPRM was prompted by the development of a modification which includes certain wiring changes to make the operation of the landing gear selector value and the opening of the landing gear doors independent of the Promimity Switch Electronic Unit (PSEU). This modification, if accomplished, terminates the need for a pre-flight check procedure of the nose gear cockpit indication system, required by AD 88-03-51.

A commenter suggested that the applicability of the rule include Model DHC-8-103 series airplanes, and airplanes equipped with Eldec PSEU Part Number 8-410-05. The FAA concurs that the addition of those airplanes is appropriate since those airplanes are subject to the same unsafe condition addressed in the Notice. The proposed applicability statement has been revised accordingly.

Further, since issuance of the Notice, de Havilland has released Service Bulletin 8–32–70, Revision B, dated December 2, 1988, which revises the effectivity to include Model DHC–8–103 series airplanes. Accordingly, the FAA amended the proposed rule to cite the latest revision to the service bulletin as the appropriate service information source.

Since the changes described above would expand the scope of the proposed rule, the FAA has determined that it is necessary to revise the Notice accordingly and provide additional time for public comment.

Currently, no additional airplanes of U.S. registry would be affected by this AD, besides the original 42 specified in the Notice. However, should a de Havilland Model DHC-8-103 series

airplane be imported and placed on the U.S. register, it would take approximately 40 manhours per airplane to accomplish the required actions, and the average labor cost would be \$40 per manhour. The modification kits will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on any affected U.S. operator is estimated to be \$1,600 per airplane.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained and the regulatory docket. A copy of it may be obtained from the Rules Docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

#### PART 39-[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

### § 39.13 [Amended]

2. By revising the Notice of Proposed Rulemaking, Docket No. 89-NM-132-AD, FR Doc. 89-19281, published in the Federal Register on August 17, 1989 [54 FR 33934], as follows: Boeing of Canada, Ltd., De Havilland Division: Applies to de Havilland Model DHC-8-100 series airplanes, Serial Numbers 3 through 119, inclusive, with Modification No. 8/0467 incorporated, and equipped with Eldec Proximity Switch Electronic Control Unit (PSEU), P/N 8-410-03, 8-410-04, or 8-410-05, certificated in any category. Compliance is required as indicated, unless

previously accomplished.

To preclude the possibility of the nose gear cockpit indication system indicating erroneous nose gear position, accomplish the

following:

A. Within 24 hours after March 25, 1988 (the effective date of AD 88-03-51) add the following to the Limitations Section of the Airplane Flight Manual (AFM) and notify all crew members. This may be accomplished by inserting a copy of this AD in the AFM:
"1. Perform the following check prior to

each flight. This check is to be performed even when the airplane is being operated with the anti-skid inoperative under the minimum equipment list:

a. Anti-skid switch-"OFF"

b. Anti-skid switch-"ON"

c. Check that inboard and outboard antiskid caution lights illuminate, and then extinguish within 6 seconds. Should the lights fail to function as noted above, dispatch is prohibited until maintenance action clears

"2. While performing the 'After Take Off'

and 'Approach' procedures:
a. Monitor the landing gear indication system during landing gear retraction and

b. If there is any irregularity in gear indication or operation at any time throughout the flight, the gear must be confirmed DOWN AND LOCKED using the alternate down-lock verification system, irrespective of gear DOWN AND LOCKED (green) indication on the normal landing gear indicating system.'

B. Any in-flight landing gear irregularity must be corrected prior to further flight.

C. Within 60 days after the effective date of this amendment, modify the landing gear control system, in accordance with de Havilland Service Bulletin 8-32-70, Revision B, dated December 2, 1988. This modification constitutes terminating action for the requirements of paragraphs A. and B. of this AD, and the revised operating procedures may be moved from the AFM.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA,

New England.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the

appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada Ltd, de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on November 17, 1989.

Steven B. Wallace,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service. [FR Doc. 89-28012 Filed 11-29-89; 8:45 am] BILLING CODE 4910-13

#### 14 CFR Part 39

[Docket No. 89-NM-216-AD]

Airworthiness Directives, British Aerospace Model BAs 146-200A and 300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-200A and -300A series airplanes, which would require modification of the fuselage rear section. This proposal is prompted by reports of a riveting deficiency during modification of Stringer 21P in the area where it is attached to the lower left-hand skin panel. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

DATES: Comments must be received no later than January 19, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-216-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East

Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-216-AD." The post card will be date/time stamped and returned to the commenter.

#### Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on British Aerospace Model BAe 146-200A and -300A series airplanes. British Aerospace (BAe) Modification HCM00737A was installed on certain BAe 146-200A and -300A series airplanes during production. BAe has now determined that rivets needed to attach the aft end of Stringer 21P to the fuselage skin were omitted from the modification. Accordingly, Stringer 21P has not been adequately riveted at its aft end termination area which is in the vicinity of fuselage frame 39X.

British Aerospace has issued Service Bulletin 53–84–00737D, Revision 1, dated August 22, 1989, which describes procedures for modification of the fuselage rear section. This modification adds eight rivet positions to the stringer end termination area which completes stringer-to-skin panel riveting. The United Kingdom CAA has classified this service bulletin as mandatory, and has issued Airworthiness Directive 005–07–89 addressing this subject.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design and registered in the United States, an AD is proposed which would require modification of the fuselage rear section in accordance with the service bulletin previously described.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$300.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of the government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations as follows:

## PART 39-[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe
148–200A and –300A series airplanes, as
listed in British Aerospace Service
Bulletin 53–84–00737D, Revision 1, dated
August 22, 1989, certificated in any
category. Compliance is required prior to
the accumulation of 3,000 landings since
new, or within 30 days after the effective
date of this AD, whichever occurs later,
unless previously accomplished.

To prevent reduced structural integrity of the fuselage, accomplish the following:

A. Modify the fuselage rear section by adding eight rivets to the Stringer 21P end termination area, in accordance with British Aerospace Service Bulletin 53–84–00737D, Revision 1, dated August 22, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 17, 1989.

#### Steven B. Wallace.

Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 89–28010 Filed 11–29–89; 8:45 am]
BILLING CODE 4910–13-M

#### 14 CFR Part 71

[Airspace Docket No. 89-ACE-34]

#### Proposed Alteration of Transition Area—Aurora, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Aurora, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure at the Aurora, Nebraska, Municipal Airport utilizing the Aurora nondirectional radio beacon (NDB) as a navigational aid.

DATES: Comments must be received on or before December 29, 1989.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone [816] 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

## SUPPLEMENTARY INFORMATION:

#### Comments invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All

communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426–3408.

Communciations must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

## The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to alter the 700-foot transition area at Aurora, Nebraska. The NDB at Aurora, Nebraska, has been relocated due to a runaway extension. Accordingly, the FAA is developing a new instrument approach procedure utilizing the Aurora NDB as a navigational aid. The establishment of this new instrument approach procedure, based on this approach aid, entails alteration of the transition area at Aurora, Nebraska, at and above 700 feet above ground level, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft, using the approach procedure under Instrument Flight Rules (IFR) from other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation— (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the crtieria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

#### § 71.181 [Amended]

#### Aurora, Nebraska [Revised]

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of Aurora Municipal Airport (lat. 40°53'39"N., long. 97°59'39"W.) and within 2 miles each side of the 110° radial of the Grand Island VOR, extending from the 5-mile radius to 7 miles west of the airport, excluding that portion which overlies the Grand Island, NE, transition area and within 3 miles each side of the 360° bearing from the Aurora, NE, NDB (lat. 40°53'33"N., long. 97°59'49"W.) extending from the 5-mile radius to 8.5 miles north of the airport.

Issued in Kansas City, Missouri, on November 14, 1989.

#### Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 89-28014 Filed 11-29-89; 8:45 am] BILLING CODE 4910-13-M

#### 14 CFR Part 71

## [Airspace Docket No. 89-ASW-48]

## Proposed Revision of Transition Area; Ada, OK

AGENCY: Federal Aviation
Administration (FAA), DOT.
ACTION: Notice of proposed rulemaking.

summary: This notice proposes to revise the transition area located at Ada, OK. The development of a new VOR/DME RWY 17 standard instrument approach procedure (SIAP), utilizing the Ada Very High Frequency Omnidirectional Radio Range (VOR), has made this proposed revision necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new SIAP to the Ada Municipal Airport.

DATE: Comments must be received on or before January 24, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 89–ASW–48, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: (817) 624–5561.

#### SUPPLEMENTARY INFORMATION:

#### **Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-48." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA

personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to § 71.181 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Ada, OK. The development of a new VOR/DME RWY 17 SIAP to the Ada Municipal Airport, utilizing the Ada VOR, has necessitated the proposal. This proposal would reduce the radius of the existing transition area from 9 miles to 6.5 miles and would create an arrival extension to the north. The current transition area is too large for the type of aircraft which use the Ada Municipal Airport. The intended effect of this proposal is to release to the public that controlled airspace which is no longer required, but will provide adequate controlled airspace for aircraft executing all the SIAP's which serve the Ada Municipal Airport. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3,

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—[1] is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

#### PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

#### § 71.181 [Amended]

Section 71.181 is amended as follows:

#### Ada, OK [Revised]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Ada Municipal Airport (latitude 34°48′20″N., longitude 96°40′14″W.), and within 3.5 miles each side of the 355° radial of the Ada VOR (latitude 34°48′09″N., longitude 96°40′12″W.) north of the Ada Municipal Airport.

Issued in Fort Worth, TX on November 16, 1989.

## Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-28013 Filed 11-29-89; 8:45 am] BILLING CODE 4910-13-M

## DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 918

#### Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior. ACTION: Request for public comment.

SUMMARY: Having satisfied the requirements of the Act in regard to abandoned coal mine reclamation, the State of Louisiana requests certification to proceed with noncoal reclamation projects as provided for under section 409 of title IV of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87, 30 U.S.C. 1202 et. seq.).

This notice sets forth the times and

This notice sets forth the times and locations for the public to submit written comments or to meet and discuss the request with Office of Surface Mining Reclamation and Enforcement (OSM) representatives or request public meetings.

DATES: OSM will accept written comments on the proposed rule until 4:30 p.m. c.s.t. on January 2, 1990.

Upon request, OSM will hold a public hearing on the proposed rule on December 20, 1989, beginning at 9 a.m. c.s.t. The public hearing will be held at the location shown under "ADDRESSES" below.

OSM will accept requests for a public hearing until 4:30 p.m. c.s.t. on December 15, 1989. If no person has contacted OSM by that date to express an interest in testifying at the hearing, it will be cancelled. If only one person requests an opportunity to speak at the public hearing, a public meeting, rather than a hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed to the Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135, or hand-delivered to the same address.

If requested, a public hearing will be held at the Tulsa Field Office of the Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550.

Requests for a public hearing should be made by contacting the individual listed under "FOR FURTHER INFORMATION CONTACT."

Copies of the Louisiana AMLR program and the request for certification are available for inspection Monday through Friday, 8:30 a.m. to 4 p.m., excluding holidays, at the following addresses:

Louisiana Department of Natural Resources, Office of Conservation, 625 North 4th Street, Baton Rouge, Louisiana 70804; Telephone (504) 342– 5588.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5315, 1100 L Street NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone (918) 581– 6430.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, Suite 550, Tulsa, Oklahoma 74135; Telephone: (918) 581–6430.

## SUPPLEMENTARY INFORMATION:

#### I. Background

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) of 1977, Public Law 98-87, 30 U.S.C. 1201 et seq.,

establishes an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

Each State having within its border coal-mined lands eligible for reclamation under title IV of SMCRA. may submit to the Secretary of the Interior a State Reclamation Plan demonstrating its capability for administering an AMLR program. Upon approval of the State Reclamation Plan by the Secretary, the State may submit to OSM on an annual basis an application for funds to be expended in that State on specific reclamation projects that are necessary to implement the approved State reclamation plan. Such annual requests are reviewed and approved by OSM in compliance with the requirements of 30 CFR part 886. AMLR funds are to be utilized to address the problems caused by past mining in the following order: First, reclamation efforts are to be directed at correcting or mitigating the problems caused by past coal mining. Certain noncoal-mining-related problems may also be addressed at the same time if they involve direct threats to the public health and safety. Second, following the completion of all coal-related impacts, a State program may then direct its efforts to alleviating the problems caused by all other types of mining. Finally, when all coal- and noncoal-related impacts have been addressed, and if certain other conditions set forth in section 402(g)(2) of SMCRA are satisfied, AMLR funds may be used for construction of specific public facilities in communities impacted by coal mining development.

The Louisiana Reclamation Plan, as submitted on February 3, 1986, was approved effective December 10, 1986 (51 FR 40795). Since this approval, the State has inspected all known or suspected coal-related sites in a 24-parish area of north Louisiana. No coal-related problem sites were identified that would qualify as eligible for funding under the AMLR program. The State has developed an inventory of all noncoal-related problem areas in the 24 parishes having known coal reserves under cooperative agreements with OSM.

## II. Discussion of Proposed Action

The Commissioner of the Louisiana Office of Conservation notified OSM by letter on June 12, 1989, (Administrative Record No. LAML-22) that the State has no known coal-related problems eligible for funding under Section 404 of SMCRA and stated that any unforeseen coal problems that might arise will be addressed as funds are available.

Once a State has reclaimed all lands adversely impacted by past coal mining, SMCRA provides that a State may utilize its AMLR funds to address problems caused by noncoal mining. To confirm the State's assertion that there are no existing coal-related problems to be addressed by the State and, thereby, allow unrestricted use of AMLR funds for noncoal purposes, OSM is seeking public comments and information concerning any known or suspected unreclaimed lands and water resources in the State that may have been adversely affected by coal-mining practices prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.

If no past coal-mining problems eligible for funding under Section 404 of SMCRA are identified through this process, the Secretary is authorized to allow the State to address noncoal problems as set forth in 30 CFR part 875. Such noncoal reclamation activities, however, may occur with one condition; that is, if a coal problem occurs or is identified some time in the future, the State must seek immediate funding for reclaiming that problem. In the event of certification by the Secretary, the State has agreed to this condition.

To assist in its analysis of Louisiana's grant application and the proposed plan for funding future coal-related problems, OSM solicits comments on all relevant economic, environmental, and legal issues involving the reclamation of lands adversely affected by past coal mining practices and the State's request to fund noncoal projects.

## Lists of Subjects in 30 CFR Part 918

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 17, 1989.

#### Raymond L. Lowrie,

Assistant Director, Western Field Operations. [FR Doc. 89–28060 Filed 11–29–89; 8:45 am] BILLING CODE 4310-05-M

## DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD8-85-21]

Anchorage Grounds; Galveston Harbor, Bolivar Roads Channel, TX

AGENCY: Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

summary: The Coast Guard is amending the anchorage regulations for Calveston Harbor by creating an anchorage for temporary use by shallow draft vessels and designating the present anchorage for deep draft vessel use only.

DATE: Comments must be received on or before January 16, 1990.

ADDRESS: Comments should be mailed to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396. The comments and other materials referenced in this notice will be available for inspection and copying in room 1209 at the above address. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered.

FOR FURTHER INFORMATION CONTACT: LTJG J.D. Irino, Project Officer, Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, Tel. (504) 589–

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice CGD8-85-21, the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped selfaddressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are LTJG J.D. Irino, Project Officer, c/o Commander, Eighth Coast Guard District Aids to Navigation Branch and CDR J.A. Unzicker, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Proposed Regulations

The Coast Guard received a recommendation from the Houston/ Galveston Navigation Safety Advisory Committee to enlarge and change anchorage regulations for the Bolivar Roads Anchorage. This committee represents a broad spectrum of waterway users in the area. A notice of proposed rulemaking was published on January 9, 1986 (51 FR 991). However, no final regulatory action was taken. The Coast Guard is now reconsidering the proposal. The proposed regulations are necessary to provide a safe haven for shallow draft vessels and to ensure sufficient anchorage space is available for deep draft vessels. The impact of the regulation is expected to be minimal.

Economic Assessment and Certification

The changes to the regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that further evaluation is unnecessary. The added length is not expected to have any significant effect on navigation and therefore it is determined that the impact will be minimal.

Since the impact of this change is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

## List of Subjects in 33 CFR Part 110

Anchorage grounds.

## **Proposed Regulations**

In consideration of the foregoing the Coast Guard proposes to amend part 110 of title 33, Code of Federal Regulations, as follows:

#### PART 110-[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

Section 110.197 is revised to read as follows:

#### § 110.197 Galveston Harbor, Bollvar Roads Channel, Texas.

(a) The Anchorage area. The area in Bolivar Roads bounded to the south by the north channel edge extending west from latitude 29°20'48" N., longitude 94°42′54" W., approximate position of Buoy "10"; thence to latitude 29°20′43" N., longitude 94°44'46.5" W., approximate position of Buoy "12"; thence to latitude 29°20'37" N., longitude 94°46'08" W., approximate position of Buoy "16"; thence 023 °T to a point, latitude 29°21'14" N., longitude 94°45'50" W.; thence 089 °T to latitude 29°21'15' N., longitude 94°44′27" W., approximate position of Buoy "B"; thence 97 °T latitude 29°21'05" N., longitude 94°42'52" W. approximate position of Buoy "A"; thence 187.5 °T to the point of beginning.

(b) The regulations. (1) The anchorage area is for the temporary use of vessels of all types, but especially for naval and merchant vessels awaiting weather and other conditions favorable to the resumption of their voyages.

(2) Except when stress of weather makes sailing impractical or hazardous, vessels shall not anchor in the anchorage eastward of a line between Buoy "B" and Buoy "12" for periods exceeding 48 hours unlessd expressly authorized by the Captain of the Port to anchor for such longer periods.

(3) No vessel with a draft of less than 22 feet may occupy the anchorage eastward of a line between Buoy "B" and Buoy "12" without prior approval of the Captain of the Port.

(4) Vessels shall not anchor so as to obstruct the passage of other vessels proceeding to or from available anchorage spaces.

(5) Anchors shall not be placed in the channel and no portion of the hull or rigging of any anchored vessel shall extend outside the limits of the anchorage area.

(6) Vessels using spuds for anchors shall anchor as close to shore as practicable, having due regard for the provisions in paragraph (b)(3) of this section.

(7) Fixed moorings, piles or stakes, and floats or buoys for marking anchorages or moorings in place, are prohibited.

(8) Whenever the maritime or commercial interests of the United States so require, the Captian of the Port, or his authorized representative, is hereby empowered to shift the positior of any vessel anchored or moored within the anchorage area.

Dated: November 17, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89-27974 Filed 11-29-89; 8:45 am]
BILLING CODE 4910-14-M

#### 33 CFR Part 117

[CGD1 89-132]

Drawbridge Operation Regulations; Eel Pond Channel, Massachusetts

AGENCY: Coast Guard, DOT.
ACTION: Proposed rule.

SUMMARY: At the request of the Town of Falmouth Department of Public Works, the Coast Guard is considering a change to the regulations governing the Eel Pond (Water Street) drawbridge across the Eel Pond Channel, at mile 0.0, at Falmouth, Massachusetts by permitting the number of openings to be limited to the hour and half hour during daylight hours from 15 May through 14 October and by requiring advance notice, all the time on, Christmas, New Years, Easter, all Sundays in January and February and year-round during evening hours. This proposal is being made in an effort to reduce traffic during the summer months and to incorporate operating procedures that have been unofficially being implemented by the Town of Falmouth. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before January 16, 1990.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004–5073.

The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays. Comments may also be hand-delivered to this address.

#### FOR FURTHER INFORMATION CONTACT:

William C. Heming, Bridge Administrator, First Coast Guard District, at (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, selfaddressed postcard or envelope.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

## Drafting Information

The drafters of this notice are Jose M. Arca Jr., project officer, and LT. John B. Gately, project attorney.

## Discussion of Proposed Regulation

This drawbridge provides a vertical clearance of 8 feet at mean high water and 10 feet at mean low water. The bridge presently opens on signal during daylight as follows: (1) October 15 to May 14 from 8 a.m. to 5 p.m.; (2) May 15 to June 14 and September 16 to October 14 from 7 a.m. to 7 p.m.; and (3) June 15 to September 15 from 6 a.m. to 9 p.m. At all other times the bridge is not manned and only opens on advance notice. However, title 33 Code of the Federal Regulation part 117 and Coast Guard records do not reflect that any special regulations were ever officially issued. Therefore, the present regulations are that, at all times, the draw shall open on signal.

## Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This determination is based on the fact that the Town Engineer had contacted the marina's and facilities upstream of the bridge and all indicated no objection. Additionally, marine traffic will still be able to transit the waterway. however, they will have to plan their movements to conform to the opening schedule. Since several companies and facilities have offices on either side of the river, it will facilitate their predestrian traffic getting between offices. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulation does not have sufficient federalism implications to warrant preparation of a federal assessment.

#### List of Subjects in 33 CFR Part 117

Bridges.

### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

Section 117.698 is added to read as follows:

#### § 117.698 Eel Pond Channel.

The following requirement apply to the draw of Eel Pond (Water Street) drawbridge at mile 0.0 at Falmouth, Massachusetts,

(a) The draw shall open at all times as soon as possible for a public vessel of the United States, State or Local vessels used for public safety, and vessels in distress. The opening signal for these vessels shall be four or more short blast of a whistle, horn, or radio request.

(b) The owners of this bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of paragraph 118.160 of this chapter.

(c) The draw shall operate as follows:

(1) On signal from October 15 through May 14, from 8 a.m. to 5 p.m. except as provided in paragraph (c)(3) and (i) of this section.

(2) Need open on signal only on the hour and half hour as follows:

(i) From May 15 through June 14 and from September 16 through October 14, from 7 a.m. to 7 p.m.

(ii) From June 15 through September 15, from 6 a.m. to 9 p.m.

(3) The draw shall open on signal if at least 8 hours advance notice is given:

(i) At all times on Christmas, New Years, Easter and all Sundays in January and February.

(ii) At all other times not stipulated in paragraph (c)(1) and (c)(2) of this section.

Dated: November 20, 1989.

#### R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District. [FR Doc. 89-27975 Filed 11-29-89; 8:45 am]

BILLING CODE 4910-14-M

## LIBRARY OF CONGRESS

36 CFR Ch. VII

National Film Preservation Board; Proposed Guidelines for the Labeling and Use of the Seal for Films Selected for Inclusion in the National Film Registry

AGENCY: National Film Preservation Board, Library of Congress.

ACTION: Notice of proposed guidelines.

SUMMARY: This notice of proposed guidelines is issued to inform the public that the Librarian of Congress pursuant to section 3 of Public Law 100-446, The National Film Preservation Act of 1988, 2 USC 178, and pursuant to the rule-making procedures provided in subchapter II of chapter 5 of title 5, United States Code, known as the Administrative Procedures Act, publishes the following proposals for public comment:

(1) The first twenty-five films selected for inclusion in the National Film Registry; and

(2) The following general guidelines issued for the benefit of film owners and distributors in order to determine whether a version of a film registered on the National Film Registry which is in their possession has been materially altered. Films which are materially altered require a label to that effect, and films not materially altered may carry a specially designed seal of the National Film Registry.

DATES: Comments should be received on or before January 16, 1990.

ADDRESSES: Copies of written comments on these proposed guidelines should be addressed to: Dr. James H. Billington, Librarian of Congress, The National Film Registry, The Library of Congress, Washington, D.C. 20540, Attention: Eric Schwartz, Counsel. Telephone inquiries: (202) 707-8350.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8350.

#### SUPPLEMENTARY INFORMATION: Previous Action

Under section 3(a)(1) of the National Film Preservation Act of 1988 (hereafter, "the act"), the Librarian is required to (A) establish criteria for guidelines pursuant to which such films may be included in the National Film Registry, except that no film shall be eligible for inclusion in the National Film Registry until 10 years after such film's first theatrical release; and (B) establish a procedure whereby the general public may make recommendations to the Board regarding the inclusion of films in such National Film Registry. In the Federal Register of February 13, 1989, the Librarian issued "Proposed" Guidelines for the Selection of Films and Proposed Procedures for the Public Participation in the Selection of Films.

Those guidelines were printed in the Federal Register subject to 30 days of public comment. One public comment was received during that period. Those guidelines will be issued in final form at a later date and at the same time that today's labeling guidelines and the list of the first twenty-five films are printed in the Federal Register in final form. Only then will the labeling guidelines and the use of the seal of the National Film Registry attach to the films listed

### Proposed Films Selected and Proposed Guidelines

Proposed Films Selected for Inclusion in the National Film Registry

Under section 3(a)(2)(A) of the Act. the Librarian after consultation with the Board shall determine "which films satisfy the criteria developed pursuant to paragraph 3(a)(1)(A) and qualify to be included in the National Film Registry" and shall select no more than twentyfive films per year for inclusion in such

The National Film Preservation Board received 962 film titles for nomination from the general public and reduced the list to twenty-five titles for consideration by the Librarian of Congress after meeting on July 19, 1989 in Los Angeles, in an open session and

in an executive session.

The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board announces the following are his nominations for the twenty-five selected for incusion in the National Film Registry for 1989 subject to public comment for a period to end on January 16, 1990:

- (1) The Best Years Of Our Lives (1946)
- (2) Casablanca (1942) (3) Citizen Kane (1941) (4) The Crowd (1928)

(5) Dr. Strangelove (or, How I Learned To Stop Worrying And Love the Bomb) (1964)

(6) The General (1927)

- (7) Gone With the Wind (1939)
- (8) The Grapes of Wrath (1940)

(9) High Noon (1952)

(10) Intolerance (1916)

- (11) The Learning Tree (1969)
- (12) The Maltese Falcon (1941)
- (13) Mr. Smith Goes to Washington (1939)

(14) Modern Times (1936)

- (15) Nanook Of The North (1922)
- (16) On The Waterfront (1954)

(17) The Searchers (1956)

- (18) Singin' In The Rain (1952) (19) Snow White And The Seven Dwarfs (1937)
- (20) Some Like it Hot (1959)
- (21) Star Wars (1977)

(22) Sunrise (1927)

(23) Sunset Boulevard (1950)

(24) Vertigo (1958)

(25) The Wizard Of Oz (1939)

## Proposed Labeling Guidelines

In accordance with section 3(a)(1)(C) of the Act, the Librarian shall "establish general guidelines so that film owners and distributors are able to determine whether a version of a film registered on the National Film Registry which is in their possession has been materially altered." These guidelines are only to apply to the twenty-five films selected for inclusion in the National Registry, listed above. The labeling requirements under the law are not effective until 45 days after publication of the twenty-five films and the labeling in final form in the Federal Register. A date certain will be specified when the guidelines are issued in final form.

In addition, in accordance with section 3(a)(2)(C), the Librarian shall "provide a seal to indicate that the film has been included in the National Film Registry as an enduring part of our national cultural heritage and such seal may then be used in the promotion of any version of such film that has not been materially altered." A seal has been designed for these purposes and will be made availble to copyright owners, exhibitors and distributors, when the labeling guidelines are made final. Under the law, any of the twentyfive films selected for the National Film Registry can carry either the seal or the labeling requirement but not both, depending on whether or not a particular vesion of any of the twentyfive films has been "materially altered" within the definition provided in section 11. Materially altered films must carry the label, and films not materially altered may carry the seal.

The approach of Congress under the Act was to leave unaffected the law governing the actual practices of colorizing or otherwise changing motion pictures from their original theatrical release to other formats for television. cable, videocassette or any other type of broadcast or distribution. The Act neither prevents nor inhibits any practices with regard to altering motion pictures. It requires only a public disclosure of such practices being applied to copies of films selected for inclusion in the National Film Registry. through a labeling requirement. Copies of films not "materially altered" can carry the seal of the National Film Registry.

After the twenty-five films are selected, labels must be attached to all copies of these twenty-five films which are either (1) colorized or (2) materially altered. Anyone who "knowingly distributes or exhibits to the public" a materially altered (including colorized) copy of the film without the required label, or with the seal of the National Film Registry, is subject to the civil and criminal penalties under the law.

The label that is attached to colorized or materially altered copies of the film is specified in the law. Neither the Librarian nor the Board can change the label that must be attached to these films. Only Congress can change the label by amending the law.

The Act, at section 4(d), sets out two labels (one for colorized films, the other for materially altered versions other than colorized ones) and specifies their placement and size. The labels are to

For colorized films-"This is a colorized version of a film originally marketed and distributed to the public in black and white. It has been altered without the participation of the principal director, screenwriter, and other creators of the original film.'

For materially altered films-"This is a materially altered version of the film originally marketed and distributed to the public. It has been altered without the participation of the principal director, screenwriter, and other creators of the original film."

For copies of films that have been both, colorized and otherwise materially altered, the law requires that both labels appear. Also, in cases where the film has been materially altered or colorized with the participation of the principal director, screenwriter or other creators of the original film, the law does not allow flexibility and the relevant label above, must be affixed to the film.

The Act imposes the duty of affixing the appropriate label to copies of the

film upon the copyright owners, distributors, exhibitors and/or broadcasters, and gives the same entities the option of applying the seal of the National Film Registry, where appropriate. Many industries which distribute and exhibit films are affected by the labeling requirements and the use of the seal. They include, but are not limited to: Broadcast and cable television (and other transmissions, such as satellite, pay per view etc.), the rental and sale videocassette markets (including other formats like laser disks etc.) theatrical exhibitors and the airlines.

When the final guidelines are issued for the labeling requirements and the use of the seal, they are to apply retroactively to all copies of the twentyfive selected films whenever they are distributed or exhibited. However, there are provisions in the law (at sections 4 and 13) for all copies of films intended for home use, through either retail sale or rental, to exclude them from the labeling and seal requirements if they have already been packaged for distribution or in the case of videocassettes only, if they are in the inventory of a manufacturer or packager, or have already been distributed to retail or wholesale distributors before the effective date of the labeling guidelines.

The Act specifically directs the Librarian, after consultation with the Board, to issue "labeling guidelines." The authority of the Librarian is obviously constrained by the provisions of the National Film Preservation Act as a whole. The guidelines issued by the Librarian cannot exceed the plain language of the Act nor the underlying interest of Congresses.

intent of Congress.

The law is only concerned with fundamental post-production alternations to films for marketing purposes. The "base line" copy of a particular film that all other copies are measured against is the first theatrically released version. The duties imposed by the Act apply only to versions embodying fundamental changes made subsequent to the first theatrical release.

The staff of the Motion Picture,
Broadcasting and Recorded Sound
Division of the Library of Congress will
answer inquires based on their research,
as to what the "original" (first
theatrically released) version is for each
of the twenty-five films. In this regard,
the Library will solicit the assistance of
the copyright owners to provide
research materials indicating the
running time and contents of the first
theatrical release for each of the twentyfive selected films.

This descriptive information concerning the first theatrical release version will be made available to copyright owners, exhibitors and distributors. Copyright owners, exhibitors and distributors will be able to call the Library at (202) 707-5840 for this information. The Librarian welcomes comments on the most effective way to provide this information, and the form it should take. for the benefit of copyright owners, exhibitors and distributors. Ultimately it is the responsibility of the copyright owners, exhibitors and distributors to decide whether or not a copy of film within their possession must carry the label or can carry the seal of the National Film Registry.

The seal of the National Film Registry, designed by the Librarian of Congress will be made available to film owners, exhibitors and distributors for placement on their copies of the twenty-five films. Copies of the seal will be made available from the National Film Registry at the Library of Congress in Washington, DC when the final labeling guidelines are issued. The Librarian of Congress welcomes comments on the

most efficient way to make this historic seal available.

Section 11 of the law defines
"material alteration" to mean "to
colorize or to make other fundamental
post-production changes in a version of
a film for marketing purposes but does
not include changes made in accordance
with customary practices and standards
and reasonable requirements of
preparing a work for distribution or
broadcast."

Section 11 goes on to add two additional definitions for further clarification. To colorize means "to add color, by whatever means, to versions of motion pictures originally produced, marketed, or distributed in black and white." And finally, under section 11(b), "excluded from the definition of 'material alteration' are practices such as the insertion of commercials and public service announcements for television broadcast."

Since many of the practices are unfamiliar to the general public, the following definitions are provided for purposes of illustration:

(a) Colorization (also known as computer color encoding): This is a process by which black and white film prints are transferred to videotape and electronically encoded with color. The film print itself cannot be colored by existing computer technologies, only by chemical processes such as tinting (the addition of a single color for effect).

(b) Panning and scanning: This is a process by which motion pictures, composed for viewing on theatre screens, are adapted for viewing on television screens (including videocassetts). This process involves reconciling the larger theatrical "aspect ratio" (ratio of width to height) to the smaller space available on a television

(c) Letterboxing: This technique is an alternative to panning and scanning and permits the original composition of a theatrical motion picture to be retained on television (including videocassettes) by reducing the size of the image. Because the entire televison screen is not used, letterboxing requires dark bands at the top and bottom of the screen.

(d) Lexiconning (also known as time compression/time expansion): This technology involves the electronic time compression or expansion of a motion picture in order to fit the picture into broadcast time slots (or to reduce the running time on videocassettes).

(e) Computer generation of images: This new technology allows for computer created life-like representations of people (or anything else) to be substituted or added onto videotapes of preexisting motion pictures.

Meeting of the National Film Preservation Board

On September 26, 1989 the National Film Preservation Board met for the third and final time this fiscal year at the Library of Congress, to discuss the labeling guidelines, found in section 3 of the Act.

The Board discussed specific practices used in the post-production and dissemination of motion pictures. The Board agreed by a 9-3 vote (with one member absent from the vote) on a motion recommending that the Librarian's labeling guidelines require labeling of films in all cases except where a film is edited for "standards and practices" (nudity, language or violence) or for the insertion of commercials or public service announcements. The Board also discussed the preferred use of the seal only in those limited cases where there was no labeling requirement. There were diferences of opinion among the Board members about the application of the "material alteration" definition in section 11 and the practices Congress intended to include and exclude from the labeling requirements and the use of the seal.

Proposed Procedures for the Labeling of the Twenty-Five Films Selected for Inclusion in the National Film Registry and the Placement of the Seal of the National Film Registry on These Films

The interpretation of congressional intent with regard to the definition of "material alteration" at section 11 is important for two reasons—the ability to place the seal of the National Film Registry on one of the twenty-five films and the labeling requirements. The Librarian issues the following information in two forms:

(1) The Librarian's encouraged usage of the label and the seal; and

(2) The proposed guidelines which encompass what is required by the law for the labeling and use of the seal, under the Librarian's interpretation of the law.

Only the proposed guidelines will invoke the civil and criminal penalties at sections 5 and 6. Both the encouraged uses, and the required uses, only apply to "material alteration" as defined in the National Film Preservation Act and therefore only to the twenty-five films a year included in the National Film Registry. The Librarian has no jurisdiction over any films other than the twenty-five and the Librarian does not feel it is appropriate to discuss labeling films in any other context, except as required by the National Film Preservation Act.

The Librarian Encourages the Following Usages of the Seal and "Material Alteration" Labels

The Librarian encourages a more limited usage of the seal, and broader usage of a label which informs the public that the version of the film they are viewing is different, in some way, from the original theatrical release. This encouraged use of a label and the seal meets the Congress' finding that the films selected for inclusion in the National Film Registry are works of American art, deserving of protection in their "original" form. It is important for the viewer to be made aware that versions of motion pictures after the first theatrical release are often changed in one way or another-especially in light of the special status reserved for the films selected for the National Film Registry. This is the Librarian's encouraged use of the seal and a label for the public's benefit, but it is not what is required by Congress under the Act.

The Librarian's encouraged usage of the seal and the labeling guidelines are consistent with the recommendations of the National Film Preservation Board. They are not inconsistent with the requirements of the law because they are simply recommendations, not requirements for film owners, distributors and exhibitors.

It is the Librarian's hope that only the original theatrical release or a version with the minimal amount of changes would carry the seal of the National Film Registry because this would inform the viewing public that they are seeing the "original." Changes that are made in the motion pictures and broadcast industries are necessary for the dissemination of works to the widest possible audience. In some cases, these changes are done without the consent of the creative artists who created them and the public should, where possible, be made aware of this. The Librarian is aware of the need to make some changes for the so-called "after markets" for films in order to provide the widest possible dissemination of the

film to the viewing public.

Although copyright owners and distributors are entitled by law to use the seal of the National Film Registry without complying with the Librarian's encouraged uses, that is, where changes have been made to films, the Librarian believes it is in the spirit of the law that those using the seal under these conditions must inform their viewers that changes have been made. In fact, it would be contrary to the spirit of the law to use the seal of the National Film Registry and not clearly indicate to the viewing public that changes have been made in the copy of the film they are

The Librarian Therefore Encourages the Use of the Seal of the National Film Registry for Each of the Twenty-Five Selected Films

(1) For copies of films as exhibited in their original theatrical release;

(2) For copies of films that are not changed by the following technical processes:

(i) Colorization;

watching.

(ii) Panning and scanning;

(iii) Time compression or time expansion;

(iv) Removal of materials by editing out scenes;

(v) Substitution of materials, including new soundtracks:

(vi) Any mutilation, physical defacement or destruction of a copy of a

(vii) Any fundamental changes in theme, plot and character including the technological substitution of characters' bodies and faces, or new images etched directly on previously released films.

(3) The Librarian's encouraged use of

the seal would not apply to:

(i) Copies of films in which production materials including soundtracks, have been enhanced during good faith restoration activities in order to repair damages or deterioration;

(ii) Where commercials or public service announcements have been inserted for broadcast television, or where materials have been removed for "community standards" regarding nudity, language or violence for broadcast television or airline use;

(4) Letterboxed versions of films for television or videotape would be encouraged, where possible, as an alternative to panning and scanning;

(5) In all cases, where the Librarian cannot encourage the placement of the seal for the above reasons, the Librarian would encourage the insertion of a label which informs the public that changes have been made from the original theatrical release.

## **Proposed Guidelines**

The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, which met in an open session, on July 19, 1989 in Los Angeles, and on September 26, 1989 in Washington, DC, announces the following are subject to public comment for a period to end on January 16, 1990:

Proposed Guidelines for the Seal and the Labeling Requirements

(1) The following practices are examples of fundamental post-production changes deemed "material alterations" under section 11 of Public Law 100–446. Copies of films in the National Film Registry which use these practices would be subject to the labeling requirements set forth in section 4 of the Act, and are prevented from using the seal of the National Film Registry:

(a) Colorization, including any black and white film or portions thereof, to which color is added by whatever

(b) Fundamental changes in theme, plot and character, including:

 (i) Technological substitution of characters' bodies and faces or life-like characters who ae modeled after known personalities;

(ii) The addition of any other new materials, by digital or other technological means, into preexisting films including the substitution of a new soundtrack (but not the remixing or remastering of a preexisting soundtrack);

(c) Removal of materials (editing out) for all purposes including broadcast time slots or for other marketing or aesthetic purposes. However, there are two exceptions to this rule, which are not "material alterations:"

(i) The removal of materials for community standards and practices, including nudity, profane language or explicit violence for broadcast television and airline use;

(ii) The inadvertent or unavoidable loss of de minimis amounts of material due to repeated uses of a particular copy, for example, by splicing and

breakage;

(d) Time compression and time expansion (lexiconning) of over x%\* of the total running time of the film, or where it is clearly perceptible to the average viewer that the action has been altered;

\*[For this particular technology, the Librarian asks for comments from the industry on the percentage of the overall running time of a film which would be considered a reasonable requirement of preparing a work for distribution or broadcast within the meaning of the Act at section 11. In particular, information would be helpful regarding the common practices and average uses of this particular technology in the exhibition and distribution of works.]

(e) Any intentional mutilations or defacements of the actual film, such as the defacing of a negative by purposefully scratching a new image

over an old image;

(2) The following practices are examples of fundamental postproduction changes that are not "material alterations" under section 11 of Public Law 100-446. Copies of films in the National Film Registry which use these practices would not be subject to the labeling requirements set forth in section 4 of the Act, and would be allowed to use the seal of the National Film Registry. However, these practices must be carried out in a manner which is reasonable and customary in the motion picture or broadcast industry measured at the time the particular work is distributed, exhibited or broadcast:

(a) The insertion of commercials and public service announcements for broadcast television purposes only, including station promotion material

and similar materials;

(b) The physical transference of film onto videotape, including panning and scanning for all films originally prepared in aspect ratios of 1.85:1 or less. For films originally prepared in aspect ratios over 1.85:1, any panning and scanning that makes changes clearly perceptible to the average viewer that the action has been altered, would be a "material alteration" subject to the labeling requirements and prevented from use of the seal of the National Film Registry;

(c) The removal or insertion of materials necessary in the preparation of films for foreign markets by dubbing, subtitling or editing for foreign censors or for foreign marketing purposes;

(d) The use of any practice, including those listed above in paragraphs (1) (a) through (e), carried out as part of any good faith restoration in order to repair damages or deterioration to the film or soundtrack;

Dated: November 21, 1989.

Approved by:

James H. Billington,

The Librarian of Congress.

IFR Doc. 89-27784 Filed 11-29-89; 8:45 am]

BILLING CODE 1410-07-M

#### DEPARTMENT OF VETERANS AFFAIRS

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

38 CFR Part 17

RIN 2900-AC31

Contract Medical Care; Non-Federal Hospital Payment/Relmbursement Rates

AGENCIES: Department of Veterans Affairs and Department of Health and Human Services.

**ACTION:** Proposed regulations; reopen comment period.

SUMMARY: The Department of Veterans Affairs (VA) is reopening the comment period on its Contract Medical Care proposed rule in response to comments received from the Maryland Hospital Association and members of the Maryland Congressional Delegation. The effect of this reopening is to allow further comment on the issue raised by the association and Congressional delegation.

DATES: Written comments must be received on or before January 2, 1990. Comments will be available for public inspection until January 9, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections, to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until January 9, 1990.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief Policies and Procedures Division, Medical Administration Service, Veterans Health Services and Research Administration, (202) 233–2504.

SUPPLEMENTARY INFORMATION: In a document published in the Federal Register on November 25, 1988 (53 FR 47726), the Department of Veterans Affairs (VA) and the Department of Health and Human Services (HHS) proposed to amend VA's medical series of regulations to carry out provisions of Public Law 99-576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986. This authority requires VA to publish regulations in conjunction with HHS describing the payment methodology and amounts for non-Federal public and private hospital care provided at VA expense. Payment methodology and amounts are to be based generally on rates allowed by Medicare under the Prospective Payment System (PPS) for similar services to Medicare beneficiaries. The comment period for the proposed regulations ended January 4, 1989. After the close of the comment period, the Maryland Hospital Association and members of the Maryland Congressional Delegation submitted comments requesting that any State payment system granted a Federal waiver for the purposes of Medicare reimbursement automatically be exempted from the proposed VA system.

Currently, there are two alternative systems recognized by the Medicare program under the provisions of 42 U.S.C. 1395f(b)(3) and 42 U.S.C. 1395ww(c). Under the Maryland system, each payor pays hospitals on the basis of charges approved by the Maryland Health Services Cost Review Commission. The charges are established at levels designed to meet individual hospital's revenue needs. Under the Finger Lakes System, each payor's rate is determined by assigning to each payor a share of each hospital's predetermined revenue cap. This cap is, in turn, based on prior year cost data trended forward to the current year. We wish to consider this issue. Therefore, we are including the comments of the Maryland Hospital Association and the Maryland Congressional Delegation in the rulemaking record and are reopening the comment period for 30 days solely for the purpose of receiving comments concerning this issue. Comments concerning any other issue will not be considered.

Approved: October 3, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Dated: November 13, 1989.

Louis W. Sullivan,

Secretary, Department of Health and Human

Services.

[FR Doc. 89-28068 Filed 11-29-89; 8:45 am]

BILLING CODE 8320-01-M

## Notices

Federal Register

Vol. 54, No. 229

Thursday, November 30, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

# DEPARTMENT OF AGRICULTURE

Office of the Secretary

Modification of Sugar Import Quota Amount

AGENCY: Office of the Secretary, USDA.
ACTION: Notice.

SUMMARY: This notice increases the quota for imports of sugars, syrups, and molasses described in Additional U.S. Note 3 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), during the quota period January 1, 1989 through September 30, 1990, from 1,955,932 metric tons, raw value, to 2,229,612 metric tons, raw value. This increase of the sugar import quota is appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT).

EFFECTIVE DATE: November 27, 1989.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION:

Presidential Proclamation No. 4941, issued May 5, 1982, amended Headnote 3 of subpart A, part 10, Schedule 1 of the Tariff Schedules of the United States (TSUS) in part to authorize the Secetary of Agriculture to establish the total amount of sugar that may be imported during any quota period and to amend the quota period for sugar imported into the United States. Effective January 1, 1989, Headnote 3 was repealed, and Additional U.S. Note 3 to Chapter 17 of the Harmonized Tariff Schedule of the Untied States (HTS) was enacted in its place. Paragraph (d) of Additional U.S. Note 3 authorizes the Secretary of Agricutture to "amend quantitative limitations (including the time period for which such limitations are applicable) which have previously been established." On September 12, 1989, the Secretary of Agriculture established the current quota period of January 1, 1989 through September 30, 1990 and a quota level of 1,955,932 metric tons, raw value. (54 FR 38258)

On June 22, 1989, the GATT Council adopted the report of the panel which examined U.S. restrictions on imports of sugar and which concluded that the quotas maintained under Additional U.S. Note 3 to Chapter 17 are inconsistent with the General Agreement. The Council requested the United States to either terminate the restrictions or bring them into conformity with the General Agreement.

Following the Council's action, the U.S. Department of Agriculture established a Taskforce to develop options for implementing U.S. law with respect to imports of sugar in a manner consistent with our GATT obligations. The Taskforce and other appropriate Government agencies are now formulating and evaluating these options.

In the interim and since no clear alternative has yet been decided upon, modification of the quota amount gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

#### Notice

Notice is hereby given that I have determined, in accordance with Additional U.S. Note 3 to Chapter 17 of the (HTS) (Note 3), that the total amount of sugars, syrups, and molasses described in subhearings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30, 1702.90.40, 1806.10.40, and 2106.90.10 of the HTS which may be entered or withdrawn from warehouse for consumption during the current sugar import quota period January 1, 1989 through September 30, 1990 is increased to 2,229,612 metric tons, raw value. Of the 2,229,612 metric tons, raw value, 1.815 metric tons, raw value, are reserved for specialty sugars from countries listed in paragraph (c)(ii) of Note 3; 2,115,000 metric tons, raw value are reserved as the total base quota amount of purposes of paragraph (c)(i) of Note 3; and 112,797 metric tons, raw value are reserved as a quota

adjustment amount to be allocated by the United States Trade Representative.

I have also determined that this modification of the quota amount gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Signed at Washington, DC on November 24, 1989.

Clayton Yeutter,

Secretary of Agriculture.
[FR Doc. 89–27956 Filed 11–24–89; 3:05 pm]
BILLING CODE 3410–10–M

Animal and Plant Health Inspection Service

[Docket No. 89-153]

Availability of Model State Program for Poultry Disease Prevention

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that a Model State Program for Poultry Disease Prevention is available to be used as a guide by States in developing uniform poultry disease prevention measures. This voluntary program provides a uniform system for preventing poultry disease outbreaks and for preventing the spread of these diseases should they occur.

FOR FURTHER INFORMATION CONTACT: Dr. Irvin L. Peterson, Senior

Dr. Irvin L. Peterson, Senior Coordinator, National Poultry Improvement Plan, Swine, Poultry, and Miscellaneous Diseases Staff; VS, APHIS, USDA, Room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7768.

SUPPLEMENTARY INFORMATION: During the 1970's and 1980's, exotic Newcastle disease and avian influenza (H5N2) struck the poultry industry in the United States, resulting in the loss of approximately 30 million birds and millions of dollars in losses for the poultry industry. Additional millions were spent by State governments and the poultry industry to eradicate these two diseases.

Following these losses, a cooperative effort was launched by industry, the research community, and State and Federal governments to develop a

system that could be used by industry and States to help prevent a recurrence of these and other poultry diseases, and to prevent the spread of poultry diseases should they occur. The system they developed is called the Model State

Program for Poultry Disease Prevention.

The Model State Program for Poultry Disease Prevention is designed to promote uniform standards for poultry disease prevention and control in participating States. Uniform standards ensure that participating States will make certain minimal poultry disease prevention, detection, and control efforts. This system will provide States with a mechanism for moving unprocessed poultry products with minimal restrictions.

The Model State Program for Poultry Disease Prevention does not emphasize vaccination and medication as primary strategies for preventing and controlling poultry disease. Instead, it emphasizes sanitation, isolation of flocks during rearing, adequate surveillance, early detection of disease, and prevention of disease spread.

By participating in the Model State Program for Poultry Disease Prevention, a State will enhance the marketability of unprocessed poultry products produced in that State, particularly during those periods when poultry disease outbreaks are occurring in that State or surrounding States.

These unprocessed poultry products will have enhanced marketability because buyers of those products will know that the products were produced in a State that has a system for controlling poultry disease.

Authority: 7 U.S.C. 429.

Done in Washington, DC, this 27th day of November 1989.

William F. Helms.

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-28064 Filed 11-29-89; 8:45 am] BILLING CODE 3410-34-M

## **Forest Service**

Mount Shasta Ski Area; Intent To Prepare a Supplement to an Environmental Impact Statement

AGENCY: Forest Service, USDA.
ACTION: Notice of intent to prepare a
supplement to an environmental impact
statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Supplement to the Environmental Impact Statement for the Mount Shasta Ski Area, Siskiyou County, California, filed September 1988. The Supplement will consider reasonable alternatives to the proposed development at the Mt. Shasta Ski Area site, including the possibility of development to the extent of the proposed site's ski area capacity. The Supplement will also consider the impacts of reasonably foreseeable development of nearby private land, including possible development of a Lemuria Village, even though the timing, nature and extent of any development is uncertain.

FOR FURTHER INFORMATION CONTACT:

Direct questions about the Supplement to Duane Lyon, MSSA Team Leader, Shasta-Trinity National Forests, 2400 Washington Avenue, Redding, CA 96001. Telephone (916) 246–5499.

Responsible Official: Robert R. Tyrrel, Forest Supervisor, Shasta-Trinty National Forests, 2400 Washington Avenue, Redding, California is the responsible official.

## SUPPLEMENTARY INFORMATION: .

The Forest Service prepared an Environmental Assessment (EA) on Mount Shasta Ski Area development in 1984 in response to public interest for downhill skiing on the mountain. The EA examined some locations which had been identified in previous studies. Based on the EA, a decision was made to allocate a total of 1,885 acres on the south slope of Mount Shasta to skiing. In October 1984, a prospectus was issued for a downhill ski development on Mount Shasta. Under terms of use offered through the prospectus, Phase I of the facility would serve a minimum of 1,200 skiers at one time. Ultimately, the facilities could be expanded to serve about 5,000 skiers at one time at the end of Phase III.

A proposal submitted by Mount Shasta Ski Area, Inc. was seleced. The site-specific Environmental Assessment addressing Phase I of the development plan was completed in March 1986 and a decision was made by the Forest Supervisor to implement the proposed action. That decision was appealed to the Regional Forester and subsequently remanded to the Forest Supervisor with direction to prepare an Environmental Impact Statement (EIS) covering all phases of the project. The EIS was completed in 1988 and a decision was made to select an alternative that would result in a medium size ski area of 4,800 skiers at-one-time at build-out. A Special Use Permit was issued to Mt. Shasta Ski Area, Inc. for a development to be constructed in three phases. The decision, based on the EIS, was appealed to the Regional Forester who subsequently affirmed the Forest Supervisor's decision. Appeals of that

decision were filed with the Chief of the Forest Service.

In October 1989, the Chief reversed and remanded the Forest Supervisor's decision on two of the 12 issues raised by the appellants. The Chief did not rule on the merits of the proposal. The Chief directed that a supplement to the EIS be prepared that considers reasonable alternative sites to the proposed action and considers impacts from reasonably foreseeable development on nearby private land. These issues will be the focus of this Supplement.

The draft SEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review during the winter of 1989–90. At that time EPA will publish a notice of availability of the draft SEIS in the Federal Register.

Public participation will be especially important during the comment period on the draft SEIS. The comment period on the draft SEIS will be 45 days from the date of the notice of availability appears in the Federal Register. To be most helpful, comments should be as specific as possible. In addition, federal court decisions have established that those who wish to participate in the process must do so in a meaningful way that alerts the agency to their position. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft Supplement stage may be waived if not raised until after the final Supplement. City of Angoon v. Hodel 803 F.2d 1016 (9th Cir., 1986), and Wisconsin Heritage, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them.

After the comment period ends on the draft SEIS, the comments will be analyzed and considered by the Forest Service in preparing the final SEIS. The Final SEIS is scheduled to be completed by May 1990. In the final SEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the final SEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: November 21, 1989.

Robert R. Tyrrel,

Forest Supervisor.

[FR Doc. 89-27977 Filed 11-29-89; 8:45 am] BILLING CODE 3410-11-M

## Mt. Ashland Ski Development Plan; Intention To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA. ACTION: Revised notice; intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service is in the process of preparing an environmental impact statement (EIS) for a proposal to permit the improvement and further development of the Mt. Ashland Ski Area on the Ashland Ranger District, Rogue River National Forest, Jackson County, Oregon. Notice of intent to prepare an EIS was published in the Federal Register February 26, 1987 [52 FR 5793). The draft EIS was released for public comment in May 1987. The public comment period was extended and ended on July 6, 1987. The original notice of intent was revised January 4, 1989 (54 FR 164). Public comments on the draft EIS showed a need for additional site specific information and analysis. The public comments also indicated a need for further review of the proposal for cross-country skiing. The final EIS was not ready for release within the time specified in the January 4, 1989, revised notice. The final EIS is now scheduled to be completed in the spring, of 1990.

FOR FURTHER INFORMATION CONTACT: Mary Smelcer, District Ranger, Ashland Ranger District, Ashland, Oregon 97520; phone (503) 482-3333.

Dated: November 15, 1989.

Ron Ketchum.

Deputy Forest Supervisor.

IFR Doc. 89-28025 Filed 11-29-89; 8:45 am]

BILLING CODE 3410-11-M

#### DEPARTMENT OF COMMERCE

**Bureau of Export Administration** [Docket Nos. 9132-01-et al.]

Export; Louis Tin-Yee Luk, et al.

Having reviewed the record and based on the facts addressed in this case, I affirm the following Decision and Order of the Administrative Law Judge

I, however, do not agree with the reasoning furnished by the ALJ in

denying the Agency Counsel's request for the imposition of a civil penalty with respect to respondents Wan and Ng. The ALJ found that there is a lack of jurisdiction to impose or collect a civil penalty against these two respondents. The record indicates that both respondents were served in accordance with the Export Administration Regulations.

The Export Administration Act, and the regulations to implement the Act, clearly provide the authority to impose civil penalties for violations of the United States export laws. See 50 U.S.C. App. 2410(c). As this Office has stated in other Orders on this matter, the authority to impose a civil penalty is vested irrespective of the nationality of the respondent or the feasibility of enforcing such a penalty. See In the Matter of Hendrick G. Wasmoeth, Docket No. 6674-01, March 19, 1987; In the Matter of Especialidades Industries Latino-Americanas, S.A., Docket No. 6683-01, June 28, 1987. Therefore, a civil penalty could be imposed against the Respondents, if the circumstances warranted such a sanction.

In light of the facts in this case, as well as the impending denial of export privileges against the Respondents, I agree with the penalty as imposed by the ALL

This Order constitutes final agency action in this matter.

Dated: November 22, 1989.

## Joan M. McEntee,

Acting Under Secretary.

In the Matter of: Louis Tin-Yee Luk, Lily Monica Wan, individually and doing business as Generex Ltd., James Ng, individually and doing business as Generex Ltd. and Jonas Suet-Fai Leung, Respondents.

[Docket No. 9132-01, 9133-01, 9133-02, 9134-01, 9134-02, 9135-01]

Appearance for Respondents: Louis Tin-Yee Luk, 125 Greenfield, Irvine, California 92715

Lily Monica Wan, 26 La Salle Road,

Kowleen, Hong Kong, James Ng, 1/E, 8th Floor, City Garden, 233 Electric Road, North Point, Hong Kong,

Generex Ltd., Room 703A, Federal Building, 369 Lockhart Road, Wan Chai, Hong Kong.

Jonas Suet-Fai Leung, 1511 Clark Street, Burbank, California 91505.

Appearance for Agency: Thomas C. Barbour, Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3837, 14th & Constitution Ave., NW., Washington, DC 20230.

#### **Preliminary Statement**

In separate charging letters dated June 30, 1989, the Office of Export

Enforcement alleged that the respondents, Louis Tin-Yee Luk (Luk), Lily Monica Wan (Wan), individually and doing business as Generex Ltd., James Ng (Ng), individually and doing business as Generex Ltd., and Jonas Suet-Fai Leung (Leung) conspired amongst themselves, and with Wai Man Chung 1 and others to violate the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (Supp. 1989)) (the Act), 2 and the Regulations. It is alleged that the purpose of the conspiracy was to export U.S.-origin computer equipment from the United States to Hong Kong without first obtaining the validated export license required by § 772.1 of the Regulations. By participating in this conspiracy, it is alleged that each of the respondents committed one violation of § 787.3(b) of the Regulations.

The charging letter against Luk also alleged that, on four separate occasions, December 10, 1983, May 5, 1984, June 6, 1984 and June 15, 1984, he exported or caused to be exported from the United States to Hong Kong, Aydin computer circuit boards without first obtaining the validated export licenses required by § 772.1 of the Regulations, thereby committing four separate violations of § 787.6 of the Regulations. It is further alleged that on or about October 23, 1984, Luk attempted to export, from the United States to Hong Kong, seven Aydin computer circuit boards without first obtaining the validated export license required by § 772.1 of the Regulations, thereby committing one violation of § 787.3(a) of the Regulations.

The charging letters against Wan, Ng and Leung alleged, in addition to the conspiracy set forth above, that the exports made by Luk were made in furtherance of the conspiracy. Therefore, it is alleged that each of the participants in the conspiracy (Wan, Ng, and Leung) also violated § 787.6 of the Regulations. The allegation is made that Wan and Ng

On March 15, 1989, pursuant to a Consent Agreement the Acting Assistant Secretary for Export Enforcement entered an Order denying Chung all export privileges for five years, the last three years of which will be suspended 54 FR 12466 (March 27, 1989).

<sup>2</sup> The alleged violations occurred between July 14. 1983 and October 23, 1984. There were periods during that time when the Regulations were continued in effect by Executive Orders issued under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706 (1982)). Between October 15, 1983 and December 4, 1983, and between March 31, 1984 and October 23, 1984, the Regulations were continued in effect by Executive Orders 12444 (58 FR 48215, October 18, 1984) and 12470 (49 FR 13099, April 3, 1984), respectively.

<sup>3</sup> Although the charging letter states that the export was made on June 6, 1984, the actual date of export was June 5, 1984.

each committed four separate violations of § 787.6 of the Regulations in connection with the exports which Luk made on December 10, 1983, May 5, 1984, June 6, 1984, and June 15, 1984. However, since it is acknowledged that, in March 1984, Leung withdrew from the conspiracy, he was charged with only one violation of § 787.6 of the Regulations, in connection with the export Luk made on December 10, 1983. The Respondents have failed to answer.

Because of the failure to answer, this office issued an Order, dated August 18, 1989, ruling Respondents in default and directing Agency Counsel to file an evidentiary submission by September 16, 1989, pursuant to \$ 788.8 of the Regulations, which provides:

#### Default (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following the disposition of contested charges.

Agency counsel filed the Motion for Default Order on September 15, 1989. The Agency also submitted documentary evidence to support allegations made in the charging letters. A copy of the above mentioned Motion for Default Judgment was also sent to the Respondents on September 15, 1989, to which there has been no response. An order to show cause why a default adjudication should not issue was transmitted on September 16, 1986. The time to respond expired on October 16, 1989 without any such filing.

#### Facts

On July 14, 1983, respondents Luk and Leung, together with two other individuals, Wai Man Chung and Aaron Mak, established a company they called Mcall Resources. On July 15, 1983, James Ng, on behalf of Generex, Limited, Hong Kong, wrote Mcall to ask if Mcall would be its agent in the United States. On July 27, 1983, Luk, on behalf of Mcall, agreed to become Generex's purchasing agent in the United States.

On September 3, 1983, Ng asked Mcall for a price quotation for Aydin Controls computer circuit boards and accessories. On September 6, 1983, Mcall telexed a price quote for the requested equipment to Ng. On September 21, 1983, Wan placed a purchase order for the circuit boards with Mcall. A revised purchase order was submitted to Mcall on September 21, 1983. On September 24, 1983, Wan telexed Luk that she did not

have the model number or series number for the Aydin computers for which she was ordering circuit boards but knew the computers had been purchased at the end of 1982.

On October 28, 1983, Mcall ordered from Aydin a complete Aydin 15/Series System. Mcall purchased the entire system because it was less expensive to take the circuit boards out of a complete system than to order each circuit board individually. Shortly thereafter, Luk advised Leung and Chung that he would hand-carry nine circuit boards to Hong Kong during a visit he had planned for December 1983. Wan telexed Luk on November 8, 1983, reminding him to "bring the [circuit boards] when you come in Dec." Further, on December 9, 1983, "Lily" requested confirmation from Luk "that you are hand carrying the [circuit boards]." There was some concern expressed by Leung and Chung that Luk would get caught if he handcarried the circuit boards to Hong Kong.

As Luk admitted during the related criminal proceeding, on December 10, 1983, he hand-carried the nine Aydin circuit boards from the United States to Hong Kong without obtaining the validated export license he knew was required for that export. Gov. Ex. 5 at p. 20. By invoice dated December 14, 1983, Mcall billed for the circuit boards, noting that payment of all but the delivery charges had been made on November 22, 1983. Gov. Ex. 21.

On February 16, 1984, Wan, on behalf of Generex, requested a price quotation from Luk for a variety of equipment, including fifteen Aydin Aycon 16/Series circuit boards and accessories. On February 22, 1984, Luk drafted a telex to Wan providing price quotations for the Aydin circuit boards.

On April 15, 1984, Luk telexed Generex to advise that Chung would be traveling to Hong Kong and could hand carry some Avdin circuit boards with

4 The facts alleged in the charging letter were admitted by Luk in a related criminal proceeding. On May 7, 1986, he was fined \$50,000 and placed on probation for five years for these violations. Luk had entered a plea of guilty to counts one, seven, twelve, thirteen, fourteen and sixteen of the indictment returned against him.

The criminal proceeding including the guilty pleas provide a basis for finding that the facts as stated in the charging letter issued against Luk are true and that those facts support a finding that Luk committed the violations alleged. While Luk's criminal conviction does not collaterally estop the other respondents from disputing the facts to which Luk pled guilty, his factual statements in the criminal proceeding, coupled with the evidence received support my finding that the facts set forth in the charging letter issued against Wan, Ng and Leung are also true.

There is no explanation for the more than 3 year delay from the criminal conviction, nor for the more than 5 year delay from the occurrence of the acts involved.

him if an order were received before April 23, 1984. However, prior to his departure from the United States, Chung decided that he would not hand carry the Aydin circuit boards with him to Hong Kong. On May 7, 1984, Ng telexed Luk asking why Luk's partner, Chung, had not yet contacted him. On the same date, Luk cabled Ng and advised him that he, Luk, would send the Aydin parts to his father in Hong Kong "without export lic." Payment for this order was to be made to Luk's personal account.

On May 22, 1984, Luk telexed Wan and advised her that he had made a shipment to his father. In the criminal proceeding, Luk admitted that on May 22, 1984 he shipped "by U.S. Post Office" three Aydin boards to Hong Kong without obtaining the validated export license he knew was required for that export.

On June 4, 1984, Luk telexed Wan to advise her that she "should already receive 1st & 2nd shipment fr. my father." The total value for those two shipments was stated as being \$11,245. On June 4, 1984, Luk prepared Mcall Invoice No. 001005 billing Nobletune<sup>5</sup> \$11,245 for the shipment of various Aydin circuit boards. On June 15, 1984, Luk prepared Mcall invoice 001006 billing Generex for three Aydin parts. identified on the invoice as the third and fourth shipments, which were shipped "via UPS" to Nobletune. As noted above, in the criminal proceeding, Luk admitted that on June 5, 1984, he knowingly exported Aydin computer circuit boards to Hong Kong without the validated export licenses he knew were required for those exports.

## Conclusion

The above facts demonstrate the involvement of these four respondents in the ordering, purchasing and exporting, from the United States to Hong Kong, of the Aydin circuit boards on which the allegations of the charging letters are based. These facts, coupled with Lux's admissions in the related criminal proceeding, also support a finding that these respondents conspired to violate the Act and the Regulations by exporting U.S.-origin equipment from the United States to Hong Kong without the validated export license required by § 722.1 of the Regulations. Further, the evidence supports a finding that the four illegal exports, which Luk admits that he made, were done in furtherance of the conspiracy.

The commodities illegally exported by respondents are controlled for reasons

<sup>&</sup>lt;sup>5</sup> This company was not charged. Apparently, because it had ceased operations in 1984.

of national security. It has been stated that "this equipment had definite military application and little or no commercial use." From the evidence presented it is clear that respondents also had apparently anticipated that their business arrangement would result in significant amounts of U.S.-origin goods being exported from the United States to Hong Kong.

I find that an order denying export privilege for 10 years from the date of the final order should be entered with respect to respondents Luk, Wan, and Generex and for 5 years, the last 3 years of which are suspended, for Leung.

The further reexport of these restricted pieces of equipment is a factor in aggravation further indicating a deliberate illegal scheme. I find that, as requested, an Order denying export privileges for the above stated periods from the date that a final order should be entered in this proceeding. Such action is warranted and is reasonably necessary to protect the public interest, and to achieve effective enforcement of the Export Administration Act and the Regulations.

I. For the period indicated with respect to each Respondent, from the date of the final Agency action. Respondents Louis Tin-Yee Luk (for 10 years) 125 Greenfield Irvine, California 92715 Lily Monica Wan (for 10 years) 26 La Salle Road Kowloon, Hong Kong James Ng (for 10 years) 1/E, 8th Floor, City Garden 233 Electric Road North Point, Hong Kong Generex Ltd., (for 10 years) Room 703A, Federal Building 369 Lockhart Road Wan Chai, Hong Kong

Jonas Suet-Fai Leung (for 5 years, 3 vears suspended) 1511 Clark Street Burbank, California 91505

and all successors, assignees, officers. partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise

subject to the Regulations.

II. Commencing two years from the date of the final Agency action, the denial of export privileges relating to Jonas Suet-Fai Leung as set forth in Paragraph I above shall be suspended, in accordance with § 788.16 of the Regulations, for the remainder of the five year period set forth in paragraph I, and shall be terminated at the end of such period, provided that Respondent has committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding. During the three year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United State or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs III to VI of this Order shall also be suspended with respect to Respondent Suet-Fai Leung during such five-year period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not

be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export

privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: October 25, 1989. Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export

<sup>\*</sup> I decline to follow the recommendation of Agency Counsel to the extent that he urges that a civil penalty of \$50,000 be imposed against Respondents Wan and Ng. This appears to be based on an attempt to obtain some equivalency of sanctions with the criminal fine imposed upon Respondent Luk. As I have previously observed, there is a lack of jurisdiction to impose or collect civil penalties upon persons not served or otherwise personally served within the United States. More significantly as pointed out in Spawr, Docket #1613 (August 29, 1989) the purpose of these administrative proceedings is not to punish but is rather aimed at obtaining compliance. Denial of export privileges accomplishes that purpose. The substantial penalty is not, in these circumstances a remedial approach or aimed at compliance but is a mimic of the criminal sanction imposed against Respondent Luk without a pretense of providing the constitutional protections afforded in the judicial criminal process.

Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-28071 Filed 11-29-89; 8:45 am] BILLING CODE 3510-DT-M

#### Foreign-Trade Zones Board

[Order No. 450]

Resolution and Order Approving the Application of the Muskogee, City-County Port Authority for a Foreign-Trade Zone in Muskogee, OK

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

#### Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the

matter, hereby orders:

After consideration of the application of the Muskogee City-County Port Authority, filed with the Foreign-Trade Zones Board (the Board) on June 28, 1988, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Muskogee, Oklahoma, adjacent to the Tulsa Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrence of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish, Operate, and Maintain a Foreign-Trade Zone in Muskogee, Oklahoma Adjacent to the Tulsa Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the Unitd States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, The Muskogee City-County Port Authority (the Grantee) has made application (filed June 28, 1988, FTZ Docket 25–88, 53 FR 27059) in due and proper form to the Board, requesing the establishment, operation, and maintenance of a foreign-trade zone in Muskogee, Oklahoma, adjacent to the Tulsaa Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 164, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Operations of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the grantee shall obtain all necessary permits from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 17th day of November, 1989, pursusant to Order of the Board.

Foreign-Trade Zones Board. Robert A. Mosbacher, Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 89-78072 Filed 11-29-89; 8:45 am] BILLING CODE 3510-DS-M

[Docket 30-89]

Foreign-Trade Zone 84—Harris County, TX; Application for Subzone Zeon Synthetic Rubber Plant, Harris County

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, rquesting specialpurpose subzone status for a new synthetic rubber manufacturing plant under construction by Zeon Chemical, Inc. (subsidiary of Nippon Zeon Co. Ltd., Japan), in Harris County, Texas, adjacent to the Houston Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 17, 1989.

The new plant is being constructed on a 34-acre parcel located on Choate Road at State Route 146, within the Bayport Industrial Development in Harris
County. The facility will be used to
process imported nitrile butadiene
rubber (NBR), by hydrogenation to
produce a patented form of
hydrogenated NBR (Zetpol), which
would be sold to producers of such
products as automobile hoses, belts, and
seals. Zeon will purchase the NBR from
Japan. Zeon plans to export about half
of the Zetpol made at the new Texas
plant.

NBR from Japan is presently subject to an antidumping (AD) order (53 FR 22553, 6/16/88), but is otherwise duty-free. Zone procedures would exempt Zeon from the AD duties on NBR used in Zetpol that is exported. The company is not seeking exemption from AD duties on products shipped into the U.S. market. The application indicates zone savings will encourage the company to shift production to the United States from Japan.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Paul Rimmer, Deputy Assistant Regional Commissioner, Southwest Region, 5850 San Felipe Street, Houston, Texas 77057; and, Colonel John A. Tudela, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, Texas 77553.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 19, 1990.

A copy of the application is available for public inspection at each of following locations:

U.S. Department of Commerce, District Office, 2625 Federal Courthouse Building, 515 Rusk Street, Houston, Texas 77002;

Office of the Executive Secretary,
Foreign-Trade Zones Board, U.S.
Department of Commerce, Room 2835,
14th & Pennsylvania Ave., NW.,
Washington, DC 20230.

Dated: November 20, 1989.

John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 89-28073 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DS-M

# International Trade Administration [A-357-007]

#### Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review and determination not to revoke in part.

SUMMARY: On July 3, 1989, the Department of Commerce published the preliminary results of its administrative review and tentative determination not to revoke in part the antidumping duty order on carbon steel wire rod from Argentina. The review covers one manufacturer/exporter of Argentine carbon steel wire rod to the United States, Acindar Industria Argentina de Aceros S.A., and the period November 1, 1987 through October 31, 1988. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

We gave interested parties an opportunity to comment on our preliminary results of review and tentative determination not to revoke. We received no comments, and our final results are unchanged from those presented in our preliminary results of review.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Alfredo R. Montemayor or Maureen A. Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255/2923.

#### SUPPLEMENTARY INFORMATION:

#### Background

On July 3, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 27921) the preliminary results of its administrative review and tentative determination not to revoke in part the antidumping duty order on carbon steel wire rod from Argentina. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

#### Scope of the Review

Imports covered by the review are shipments of carbon steel wire rod. During the review period, such merchandise was classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated ("TSUSA").

This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item numbers 7213.20.00, 7213.31.30, 7313.49.00, 7213.39.00, 7213.41.30 or 7213.50.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/ exporter of this merchandise to the United States, Acindar Industria Argentina de Aceros S.A. ("Acindar"), and the period November 1, 1987 through October 31, 1988. There were no known shipments by Acindar of this merchandise to the United States during the period and there are no known unliquidated entries.

#### Final Results of Review and Determination Not To Revoke in Part

We invited interested parties to comment on the preliminary results of review and tentative determination not to revoke in part. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review, and we determine that the following margin exists:

Manufacturer/ exporter	Time period	Margin (per- cent)	
Acindar	11/01/87-10/31/88	1 119.11	

<sup>1</sup> No shipments during the period; margin from the antidumping duty order.

Further, we determine not to revoke in part the antidumping duty order.

As provided for by section 751(a)(1) of the Tariff Act, the Department shall require a cash deposit of estimated antidumping duties based on the above margin. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipment occurred after October 31, 1988 and who is unrelated to the reviewed firm, a cash deposit of 119.11 percent shall be required. These deposit requirements are effective for all shipments of Argentine carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and §§ 353.22 and 353.25 of the Commerce Regulations (54 FR 12778; March 28, 1989) (to be codified at 19 CFR 353.22 and 353.25).

Dated: November 18, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-28074 Filed 11-29-89; 8:45 am]

#### [A-588-405]

Cellular Mobile Telephones and Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on cellular mobile telephones and subassemblies from Japan. The review covers two manufacturers of this merchandise and the period December 1, 1986 through November 30, 1987. We preliminarily determine the dumping margins to range from zero to 2.77 percent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION: .

## Background

On December 19, 1985, the Department of Commerce ("the Department") published in the Federal Register (50 FR 51724) an antidumping duty order on cellular mobile telephones and subassemblies from Japan. Two respondents, Mitsubishi Electric Corporation ("MELCO") and Nihon Dengyo, requested in accordance with § 353.53a(a) of the Commerce regulations (19 CFR 353.53a(a) (1988)) that we conduct an administrative review. We published a notice of initiation of the antidumping duty administrative review on January 27. 1988 (53 FR 2262). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

## Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system to

customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS") as provided for in section 1201 et seq of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS number(s).

Imports covered by this review are cellular mobile telephones ("CMTs"), CMT transceivers, CMT control units. and certain subassemblies thereof, which meet the tests set forth below. CMTs are radio-telephone equipment designed to operate in a cellular radiotelephone system, i.e., a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, i.e., a box of electronic subassemblies which receives and transmits calls; and (2) a control unit, i.e., a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or. alternatively, portable power sources. are included in this antidumping duty order.

Subassemblies are any completed or partially completed circuit modules, the value of which is equal to or greater than five dollars and which are dedicated exclusively for use in CMT transceivers or control units. The term "dedicated exclusively for use" only encompasses those subassemblies that are specifically designed for use in CMTs, and could not be used, absent alteration, in a non-CMT device. The Department selected the five dollar value for defining the scope since this is a value that it has determined is equivalent to a "major" subassembly. The Department feels that a dollar cutoff point is a more workable standard than a subjective determination such as whether a circuit module is "substantially complete." Examples of subassemblies which may fall within this definition are circuit modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesize, duplexer, power supply, power amplification, transmitter and exciter. The presumption is that CMT

subassemblies are covered by the order unless an importer can prove otherwise. An importer will have to file a declaration with the Customs Service to the effect that a particular CMT subassembly is not dedicated exclusively for use in CMTs or that the dollar value is less than five dollars, if he wishes it to be excluded from the order.

The following merchandise has been excluded from this order: pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

During the review period, cellular mobile telephones and subassemblies were classified under items 685.28 and 685.33 of the Tariff Schedules of the United States. This merchandise is currently classified under HTS item numbers 8525.20,60, 8525.10.80, 8527.90.80, 8529.10.60, 8529.90.50, 8542.20.00, and 8542.80.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers of Japanese CMTs and subassemblies and the period December 1, 1986 through November 30, 1987.

#### United States Price

In calculating United States price and Department used purchase price or exporter's sales price ("ESP"), as defined in section 772 of the Tariff Act, as appropriate.

Purchase price was based on the packed f.o.b. price to an unrelated purchaser in the United States. ESP was based on the packed delivered price to the first unrelated purchaser in the United States. Where applicable, we made deductions for foreign inland freight and insurance as well as Japanese brokerage fees. For ESP, we made further adjustments for ocean freight, marine insurance, U.S. brokerage/handling fees, U.S. inland freight, U.S. duties, discounts, rebates, commissions to unrelated parties, warranties, credit, selling expenses incurred in Japan and in the United States, internal taxes, and any increased value resulting from further processing in the United States.

## Foreign Market Value

In calculating foreign market value the Department used home market price, third-country price or constructed value, as defined in section 773 of the Tariff Act. Home market price was used when sufficient quantities of such or similar

merchandise were sold in the home market to provide a basis for comparison. Third country price was used when insufficient quantities of such or similar merchandise were sold in the home market to provide a basis of comparison. When insufficient quantities of such or similar merchandise were sold in either the home market or third-countries, we used constructed value.

Home market and third-country prices were based on the packed delivered or ex-warehouse price to unrelated purchasers, with adjustments, where applicable, for inland freight and insurance, warranties and technical services, ocean freight and insurance, customs duty and brokerage, indirect selling expenses up to the amount of indirect selling expenses and commissions in the United States, third-country freight, internal third country taxes, credit, and differences in the cost of packing. No other adjustments were claimed or allowed.

We calculated constructed value in accordance with section 773(e) of the Tariff Act. We included cost of materials, labor, and factory overhead in our calculations. Because MELCO's selling, general, and administrative ("SG&A") expenses were greater than the statutory minimum of ten percent of the cost of manufacture, we used MELCO's actual SG&A. For Nihon Dengyo, the statutory minimum of ten percent was used for SG&A. For both Nihon Dengyo and MELCO, we used the statutory minimum of eight percent for profit. To constructed value we added U.S. packaging and made further adjustments, where applicable, for indirect selling expenses and credit.

## Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period December 1, 1986 through November 30, 1987:

Manufacturer	Margin (percent)	
MELCONihon Dengyo	2.77	

Parties to the proceeding may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from

interested parties may be submitted not later than 30 days aftert the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with § 353.38(e) of the Commerce regulations (54 FR 12785; March 28, 1989) (to be codified at 19 CFR 353.38(e)). The Department will publish the final results of the administrative review including the results of its analysis of any such written comments or oral argument.

Representatives of interested parties may request disclosure of proprietary information under administrative protective order within 10 days of the date that the interested party becomes a party to the proceeding but in no event later than the date the case briefs are due.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required for MELCO. Because there was no margin for Nihon Dengyo, no cash deposit will be required for this manufacturer.

For shipments from the remaining known manufacturers and exporters not covered by this review, the cash deposit will continue to be at the latest rate applicable to each of those firms. For any further entries of this merchandise from a new exporter not covered in this or prior reviews, whose first shipments occurred after November 30, 1987 and who is unrelated to any reviewed firm, a cash deposit of 2.77 percent shall be required. These deposit requirements are effective for all shipments of Japanese cellular mobile telephones and subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce regulations).

Dated: November 20, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-28075 Filed 11-29-89; 8:45 am] BILLING CODE 3510-DS-M

#### [C-201-402]

Lime From Mexico; Final Results of Changed Circumstances Countervalling Duty Administrative Review and Revocation of Countervalling Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of final results of changed circumstances countervailing duty administrative review and revocation of countervailing duty order.

SUMMARY: On August 14, 1989, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on lime from Mexico. We have now completed that review and determine to revoke the countervailing duty order effective August 24, 1986.

EFFECTIVE DATE: November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Holly Kuga, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: [202] 377–2786.

## SUPPLEMENTARY INFORMATION:

#### Background

On August 14, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 33264) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on lime from Mexico (49 FR 35672; September 11, 1984). The Department has now completed that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

#### Scope of Review

Imports covered by this review are shipments from Mexico of calcium oxide (CaO), commonly called quicklime or lime, and calcium hydroxide [Ca(OH)<sub>2</sub>], commonly called hydrated lime or hydrate. Through 1988, such merchandise was classifiable under item numbers 512.1100 and 512.1400 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under item

numbers 2520.20.00, 2522.10.00 and 2522.30.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

## **Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. On October 2, 1989, we received comments from petitioners, Chemical Lime—Southwest, Inc. and CHEMSTAR, Inc., and a respondent, Refractarios Basicos, S.A. ("REBASA"). On October 10, 1989, we received rebuttal comments from REBASA and Sonocal S.A.,

another respondent.

Comment 1: Petitioners claim that U.S. law does not require an injury determination in the circumstances of this case. At the time the investigation was conducted, the United States had no "international obligations" under section 303(a)(2) of the Tariff Act to provide an injury determination on dutyfree lime from Mexico because Mexico was not a contracting party to the General Agreement on Tariffs and Trade ("GATT"). Article VI of the GATT contains no language requiring that subsequent injury reviews be conducted with respect to countervailing duty orders validly issued before a country accedes to the GATT, nor does any document associated with Mexico's GATT accession indicate that Mexico had the right to injury reviews of outstanding countervailing duty orders. A basic principle of statutory construction and of the interpretation of treaties requires that obligations be interpreted as having prospective effect, unless their terms clearly indicate that they are to apply retroactively.

Respondents reply that section 303(a)(2) directly parallels the operative language in Article VI by prohibiting the imposition of countervailing duties on duty-free merchandise, absent an affirmative injury determination by the International Trade Commission ("ITC") when the international obligations of the United States require such a determination on that merchandise. Lime from Mexico is duty free; Mexico became a contracting party to the GATT on August 24, 1986; and, the GATT is considered an international obligation within the meaning of section 303(a)(2). Therefore, effective August 24, 1986, lime from Mexico is entitled to an injury determination under U.S. law prior to the assessment of countervailing duties.

Sonocal also counters the assertion that the obligation for providing an injury determination is only prospective by arguing that the obligation embodied

in section 303(a)(2) to make an injury determination is unconditionally established by reference to the imposition of duties. Neither the prior existence of an order nor the absence of a provision authorizing an injury investigation after the order has been issued affects the obligation under section 303(a)(2) not to levy countervailing duties in this case without an affirmative injury determination. By characterizing the obligation for an injury determination in this case as retroactive application of the statute and a violation of the principle of prospectivity, petitioners misstate the fundamental issue.

Department's Position: Section 303(a)(2), which extended section 303 to duty-free merchandise and provided for an injury determination to meet U.S. obligations under Article VI, proscribes the "imposition" of countervailing duties on duty-free merchandise in the absence of an injury determination only if such a determination is required by the "international obligations" of the United States. The issue of the United States' international obligations in this case, as a result of Mexico's accession to the GATT, turns on whether the requirement in Article VI for an injury determination prior to levying countervailing duties is a continuing obligation or a one-time provision that terminates with the issuance of a countervailing duty order. If the injury requirement in Article VI applies throughout the life of an order, the United States is under an international obligation to conduct an injury investigation in this case. If, on the other hand, the only test of the legitimacy of an order is whether it was in accordance with the international obligations of the United States at the time it was issued, then no subsequent obligation exists.

Mexico's rights under section 303(a)(2) rest exclusively on the proper interpretation of the term "imposed" and the nature of the United States' international obligations. Section 303(a)(2) uses "imposed" in the same fashion as Article VI uses the term "levy." By using the word "levy," the drafters of the GATT tied Article VI obligations to the act of collecting a

countervailing duty.

Moreover, the legislative history of the Trade Agreements Act of 1979 speaks further to the general proposition that the United States is obligated to uphold the principles of the GATT in its domestic law. Given the general framework of Congressional acknowledgement of the GATT as an international agreement that must be adhered to in domestic law, the

Department believes that providing for an injury determination in this case fulfills Congressional intent under the countervailing duty law.

Comment 3: Petitioners claim that the Department has deduced the requirement for an injury determination with respect to the outstanding order on lime from Mexico based on a single word, "levy," in Article VI. The Department's conclusion that "levy" means "assess" duties, thus creating an obligation to conduct an injury investigation on an order that was issued before any right to the injury test existed and in which no injury review is authorized by law, is a misreading of that provision. As used in Article VI, "levy" is merely a general reference to the overall process of imposing countervailing duties and not a specific step in that process, the actual assessment of duties. The definition of "levy" appears in a footnote to Article 4:2 of the "Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade" ("the Subsidies Code") and has meaning only as used in that context, to distinguish between provisional measures and the final assessment of countervailing duties. The definition does not govern, or have any special relevance to, interpreting the term in the context of Article VI. Thus, it does not have the far-reaching significance attributed to it by the Department.

Sonocal responds that the definition of "levy" cannot be restricted solely to the context of the Subsidies Code. The meaning of "levy" in Article VI is logically and properly found in the Subsidies Code, an international agreement concluded with the specific purpose of prescribing the interpretation and application of Article VI. Article VI states that no contracting party shall levy any countervailing duty on the products of another contracting party without a determination of injury and defines the right to an injury determination in absolute terms. The legislative history is also clear that Congress intended section 303(a)(2) to conform the countervailing duty law to Article VI. Consequently, there is no basis for inferring that the term "imposed" in section 303(a)(2) has any legal meaning independent of the term "levy" in Article VI or that a contracting party foregoes its right to an injury determination under Article VI because it became entitled to assert that right only after a countervailing duty order was issued. In fixing the point at which the right to an injury determination must be accorded, Article VI refers only to

the "levy" of duties.

Respondents assert that the term "levy" refers specifically to the final act of assessing countervailing duties. Thus, prior to Mexico's accession to the GATT, the Department was correct in assessing countervailing duties without an injury determination pursuant to section 303(a)(1). However, once Mexico became a contracting party to the GATT, Article VI became effective between the United States and Mexico, and section 303(a)(2) became the controlling statute. Thus, an affirmative injury determination by the ITC is a mandatory prerequisite to any assessment of countervailing duties on lime from Mexico subsequent to August 24, 1986. The exception for outstanding orders asserted by petitioners has no basis in Article VI or the countervailing duty law.

Department's Position: Although it is true that Article VI does not expressly define "levy," the word was used as it was commonly understood at the time. i.e., "imposing and collection of a tax or other payment." Because Mexico's entitlement to an injury determination prescribed by Article VI arose when it became a contracting party to the GATT, the United States cannot collect countervailing duties absent an affirmative injury determination.

Comment 4: Petitioners argue that the precedents for revoking this order cited by the Department, "Indian Fasteners" and "Carbon Steel Wire Rod from Trinidad & Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order" (50 FR 19562; May 9, 1985) ("T & T Wire Rod") are inapplicable. These cases were wrongly decided because the United States' obligation under the GATT for providing an injury determination is prospective only and is required only with respect to investigations initiated after the change in status of the goods or the country involved. These cases also are distinguishable from this case because India and Trinidad & Tobago were contracting parties to the GATT when the countervailing duty investigations were conducted, whereas Mexico acceded to the GATT only after the order on lime was issued.

Respondents concur with the Department's reliance upon the "Indian Fasteners" and "T & T Wire Rod" precedents in making its determination to revoke this order and assert that petitioners have cited no legal precedent to contradict the Department's determinations in those cases. Even though the factual context in this case may be slightly different from the

precedents cited, the legal ramifications are exactly the same; section 303(a)(2) applies to merchandise whenever both factual prerequisites (duty-free status and international obligations) exist and the order in which these prerequisites were met is a distinction without a difference.

Department's Position: We addressed the issue of prospective application of U.S. obligations under Article VI in our response to Comment 1 and stand by our reliance on the "Indian Fasteners"

and "T & T Wire Rod" precedents. In "Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order" (47 FR 44129; October 6, 1982) ("Indian Fasteners"), the Department determined that "Congress intended 'impose' to mean 'levy,' " at the time section 303(a)(2) was enacted and that "the jury requirement extends beyond the issuance of the countervailing duty order throughout the life of an order whenever duties are assessed or collected." Accordingly, Article VI prohibits the United States from "imposing," or assessing, countervailing duties on lime from Mexcio unless there has been a determination that the imported goods are causing, or threatening to cause, material injury to a

U.S. industry.

To argue, as petitioners have, that any obligations with respect to an injury determination terminates with issuance of an order, and that application of the injury requirements of Article VI to this case is a retroactive application of treaty obligations, overstates the significance of an order and misinterprets the nature of such obligations. Although the determinations regarding subsidies and injury (where the latter is required) are normally made prior to the issuance of a countervailing duty order, the one-time issuance of an order does not vitiate the continuing nature of the Article VI obligation. The GATT has always recognized that a contracting party has a continuing obligation to review and update the original determinations that resulted in the countervailing duty order; the issuance of an order does not establish a basis for collecting duties indefinitely. Under the U.S. countervailing duty law, administrative reviews are conducted periodically and countervailing duties assessed in accordance with U.S. obligations in effect at the time the subject merchandise entered into the United States. Thus, the United States is fully within its rights to collect countervailing duties on entries of lime from Mexico made on or before August 23, 1986. Only subsequent to Mexico's

accession to the GATT, on August 24. 1986, did the legal prerequisites for an order issued on duty-free merchandise under section 303(a)(1) cease to exist in the absence of an injury determination, and the obligation for an injury determination arise.

Comment 2: Petitioners argue that GATT cannot provide an independent source of authority for an injury investigation in this case because, having never been ratified by Congress. the GATT has the status of an executive agreement that is inferior to subsequently enacted legislation. Since Article VI took effect with respect to the United States, Congress has enacted legislation providing for injury investigations and reviews in a wide variety of situations but has declined to authorize injury determinations in the circumstances of this case.

Sonocal replies that, in the case of the CATT, the President was authorized by Congress to enter into an international agreement, and the fact that Congress has not subsequently ratified the agreement does not in itself vitiate the agreement or preclude its enforcement in domestic law; executive agreements. like formal treaties, can be enforced as the supreme law of the land. Sonocal also points out that petitioners have acknowledged that section 303(a)(2) was enacted to satisfy U.S. obligations under Article VI. Finally, Sonocal asserts that where the specific purpose of a statute, as clearly established by its legislative history, is to give effect to an obligation contained in an international agreement to which the United States has acceded, one cannot conclude without any basis in the language of the statute that, in the process of implementing a GATT provision, Congress restricted the scope of U.S. obligations under that provision.

Department's Position: Since signing the GATT in 1948, the United States has consistently taken the position that it was required under international law to fulfill the obligations of that agreement. The United States has agreed to the Protocol Application and has undertaken numerous GATT obligations thereunder. The fact that Congress has authorized the President to enter into several rounds of trade negotiations under the auspices of the GATT also supports the view that the GATT was to be enforced as domestic law. The legislative history of section 303(a)(2) clearly indicates that the section was enacted to fulfill U.S. obligations under Article VI to provide for an injury determination on duty-free merchandise.

Comment 5: Petitioners argue, and respondents agree, that section 303(a)(2) of the Tariff Act specifies that any injury

determination in this case must be conducted by the ITC pursuant to Title VII of the Tariff Act. The only provision of law that currently authorizes a postorder injury investigation, and thus the only potentially relevant provision of Title VII to this case, is a changed circumstances review under section 751(b) of the Tariff Act; this section authorizes such reviews by the ITC only in cases where the ITC has previously made an injury determination. However, the ITC has consistently held, and informed the Department in this case. that it lacks the statutory authority under section 751(b) or within the framework of the countervailing duty law to conduct a post-order injury investigation of an outstanding countervailing duty order issued without an ITC injury determination pursuant to section 303(a)(1).

Department's Position: We believe that in the circumstances of this case, it would be inappropriate for the Department to maintain the order or, as respondents would have it, revoke the order for want of a determination of the likely effects on a United States industry of revocation of the order. Although the language of section 303(a)(2) requires an injury investigation when our international obligations require it as a condition for collecting countervailing duties, the language referring to Title VII was added to the countervailing duty law in 1979, along with Title VII itself. Prior to 1979, section 303(b)(A), which has since been repealed, required the ITC to conduct "such investigation as it deemed necessary, whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such article or merchandise into the United States" in order to fulfill U.S. international obligations for an injury determination. The reference to Title VII in section 303(a)(2) reflects Congress' intention to conform section 303(a)(2) to the addition of Title VII, and the legislative history behind section 303(a)(2) indicates that Congress merely intended to accomplish a largely ministerial function in conforming the two portions of the new legislation. Accordingly, section 303(a)(2) does not contemplate conducting an injury investigation pursuant to a specific provision of the statute.

Congress has not specifically addressed the anomalous situation faced in this case. However, Congress made clear its intent to provide an injury determination for merchandise entered duty-free from a contracting party to the GATT in the legislative

history of the Trade Act of 1974. See, S. Rep. No. 1298, 93d Cong., 2d Sess. 185. Given that we are faced with a circumstance that can best be described as a "gap" in the law, we are persuaded that the current procedure is appropriate in light of the settled principle of administrative law that where the intent and object of a statute are manifest, agency action consistent with the intent is a proper exercise of an agency's authority.

Comment 6: Petitioners assert that the ITC's section 332(g) investigation in this case was conducted under Title III of the Tariff Act, not Title VII, and that section 332(g) does not establish procedures or standards for injury investigations or authorize the ITC to make an injury determination of any kind.

Respondents agree with petitioners that the section 332(g) investigation conducted by the ITC in this case is not the legal equivalent to an injury investigation required as the result of section 303(a)(2). REBASA further argues that no provision of the countervailing duty law permits the Department to substitute a section 332(g) investigation conducted by the ITC as a proxy for the required material injury determination.

Department's Position: Under section 332(g), the President of the United States, through the United States Trade Representative ("USTR"), requested that the ITC "conduct an investigation into and report to the President on whether the probable economic effect on an industry in the United States of revocation by the Department of Commerce of the outstanding countervailing duty order on lime from Mexico . . . would be such that (1) an industry would be materially injured, or would be threatened with material injury or (2) the establishment of an industry in the United States would be materially retarded." See, "Conditions of Competition Between U.S. and Mexican Lime in the United States Market" (USITC Publication 2210 at page 1; August 1989) ("ITC report") While section 332(g) does not establish procedures or standards for an injury determination, it is clear from USTR's request that the ITC was to conduct an investigation employing the same terms as a Title VII injury determination. The ITC's report serves as the factual basis for our determination in this case. With respect to the claim that no provision authorizes the Department to rely on the ITC report as a basis for determining injury, we have addressed this in our response to comment 5.

Comment 7: Petitioners argue that no part of section 751 (b) or (c), or any other provision of law, authorizes the Department to conduct an injury investigation or to make an injury determination. Further, any injury determination by the Department under section 751 would not satisfy the requirements of section 303(a)(2) because it would not be an injury determination within the meaning of section 303(a)(2) nor would it be a determination by the ITC. Thus, the purported preliminary injury determination by the Department is unauthorized and ultra vires.

REBASA agrees with petitioners that the Department does not have the authority to make the injury determination required by the statute in this case. The statutory authority to determine material injury is given exclusively to the ITC. The Court of Appeals for the Federal Circuit has recently noted, "[i]n the intricate administrative machinery Congress has erected over the years for dumping and countervailing duty cases, one unique feature is the allocation of responsibility to two agencies otherwise independent of one another, the Commerce Department and the ITC, the requisite injury determination for the latter, and everything else for the former." Algoma Steel Corp., Ltd. v. United States 865 f.2d 240, 241 (Fed. Cir. 1989) ("Algoma"). Because the Department has no statutory authority whatsoever to make an injury determination in this or any other case, it cannot substitute its own determination, even if based in part on an ITC decision, for that of the ITC material injury determination required as a result of section 303(a)(2).

Department's Position: We do not consider this determination to be ultra vires for the reasons stated in our response to Comment 5. We emphasize that the Department has an obligation to effectuate the purpose of the laws that we administer. REBASA's reference to "Algoma" is not on point. The dictum referred to addresses the circumstances of that case, and of the vast majority of antidumping and countervailing duty determinations made under the Tariff Act. However, as we have stated, the current situation is anomalous and is not specifically addressed in the law. The courts have held that the Department has the authority to implement the intent of legislation designed to fulfill the international obligations of the United States, even where the legislation itself contains a gap with regard to meeting those obligations and the general intent of Congress. See, Matsushita Electric

Industrial Co. Ltd. v. United States, 529 F. Supp. 670 (Ct Int'l Trade 1981), and United States Steel v. United States, 618 F. Supp. 496 (Ct. Int'l Trade 1985), appeal dismissed as moot, 792 F. 2d 1101.

Comment 8: Petitioners claim that Congress' failure to enact a provision in the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") allowing for an injury test for outstanding countervailing duty orders on duty-free merchandise, where U.S. international obligations require an injury determination, is a clear indication that Congress did not want the ITC to conduct injury reviews of countervailing duty orders in cases where the exporting country did not accede to the GATT until after issuance of the order. Furthermore, petitioners point out that with section 104 of the Trade Agreements Act of 1979, Congress provided for injury reviews for outstanding section 303 orders, and an incentive for prompt accession to the Subsidies Code, by allowing injury reviews for orders in effect on January 1, 1980 for "countries under the Agreement" if requests for such reviews were received prior to January 1, 1983; no right to an injury test was provided for section 303 orders issued after January 1, 1980. Since the order on lime from Mexico was issued under section 303 after January 1, 1980, providing an injury determination in this case would be contrary to the terms of section 104 and the intent of Congress in enacting that section.

Sonocal counters by arguing that the legislative history of the 1988 Act serves only to undercut petitioners' assertion that no injury test is required in the circumstances of this case. During consideration of the 1988 Act, Congress had the opportunity to grant express authority to conduct an injury investigation where the requirement for an injury determination arises after a countervailing duty order has been issued. Congress specifically declined to alter existing law to provide such authority even though consideration of the proposed measure proceeded on the assumption that there was such an obligation and that, in the absence of express authority to conduct an injury investigation on an existing order, the only remaining option available under the law was to proceed with revocation. Sonocal further argues that the controlling statute, section 303(a)(2), has not been amended to restrict the scope of U.S. injury test obligations to other GATT contracting parties under Article VI and that subsequent legislation establishing procedures for injury tests (e.g., section 104), which makes no

specific provision for an injury test in the circumstances of this case, do not constitute later federal legislation overriding any contrary GATT

obligation.

Department's Position: There is no basis for petitioners' conclusions, particularly in light of the fact that Congress was made aware that the orders would have to be revoked absent an injury determination. We do not believe that, without providing for an injury determination, revoking the order would have been consistent with Congressional intent to collect countervailing duties on merchandise that we have determined has benefited from subsidies. Thus, the conclusion that Congress would have acquiesced to revocation without provision of an injury determination would be inconsistent with previously expressed intent and is without merit.

Petitioners further confuse the concept of "country under the Agreement," which refers to signatories of the Subsidies Code, and the provision in section 303(a)(2), which refers to our obligations under Article VI to provide an injury determination on duty-free merchandise from contracting parties to the GATT. Whatever conditions were placed on the provision of an injury determination on merchandise from countries that signed the Subsidies Code do not apply, either explicitly or implicitly, to merchandise subject to section 303(a)(2), which is based upon our Article VI obligation and is distinct from the Subsidies Code.

Comment 9: Petitioners claim that there has been no showing of "changed circumstances sufficient to warrant review" in this case. Mexico's accession to the GATT did not create any obligation on the part of the United States for an injury determination; no valid injury determination constituting a sufficient change in circumstances has been made; and, because U.S. law does not authorize an injury determination in this case, a purported injury determination by the ITC or the Department cannot provide the basis for revocation of the countervailing duty

Sonocal rebuts petitioners' assertions by arguing that the Department's determination that it lacks authority under section 303(a)(2) to assess countervailing duties on lime from Mexico in the absence of an injury determination provides changed circumstances sufficient to warrant a review. The absence of a valid injury determination and a claim that a purported injury determination by the ITC or the Department cannot provide

the basis for revocation of the countervailing duty order, because U.S. law does not authorize an injury determination in this case, does not affect the essential requirement for an injury determination.

Department's Position: We discussed the basis for our obligation to conduct an injury investigation, and the Department's authority for making an injury determination, in our responses to Comments 1 and 7, respectively. We believe that the lack of authority to assess countervailing duties without an injury determination and the absence of an affirmative determination of injury are changed circumstances sufficient to warrant review. We also disagree with petitioners claim that, because an injury determination in this case is not authorized under U.S. law, the Department does not have the authority to revoke this order. As we have stated, we believe the Department has the authority to make an injury determination and, consequently, to revoke the order on the basis of its determination that a U.S. industry will not be materially injured, or threatened with material injury, if the countervailing duty order is revoked.

However, if there were no legal basis for providing an injury determination in this case, the Department would be compelled to revoke the countervailing

duty order.

Comment 10: Respondents argue that, because there is no provision in the countervailing duty law authorizing the Title VII injury investigation required by U.S. law and the international obligations of the United States in this case, the only means under the law for satisfying the requirement in section 303(a)(2) that countervailing duties not be imposed on lime from Mexico without an affirmative injury determination is to revoke the order.

Department's Position: We disagree. As discussed in our response to Comment 5, we believe the Department has the authority for meeting the obligation to make an injury determination in this case. The Department's determination to revoke the order on lime from Mexico is based not on the ITC's lack of authority to conduct such a review under Title VII but on our determination that a U.S. industry will not be materially injured, or threatened with material injury, if the countervailing duty order is revoked.

Comment 11: Petitioners claim that, because injury determinations must be made under Title VII, injury investigations must be conducted in accordance with the standards and procedures for Title VII investigations

prescribed by statute and ITC rules. In this case, petitioners' counsel were denied access to the business confidential information under administrative protective order (APO) to which representatives of interested parties are entitled in Title VII injury investigations and which is essential to participate effectively in such proceedings. This denial crippled the ability of petitioners' counsel to participate effectively in the ITC's investigation, because counsel had no opportunity to correct or rebut erroneous findings and assumptions. To permit revocation on the basis of the ITC's investigation would run afoul of the Administrative Procedure Act (APA), which requires that federal agencies provide an adequate opportunity for parties to an investigation to be heard. Petitioners further claim that because of delays by the Department in releasing business proprietary information under APO, particularly the confidential ITC report. access to proprietary information by petitioners' counsel during the Department's administrative review was inadequate, and such minimal access constitutes a violation of petitioners' procedural rights and due process.

Department's Position: We disagree. The ITC's investigation was conducted under section 332(g), and petitioners' opportunity to participate and comment were fully consistent with the procedures established for such investigations. The Department, not the ITC, is the decision maker in the injury investigation in this case, and petitioners had complete access under APO to the record established in the ITC's investigation during the Department's administrative review. Furthermore, we do not believe that the administrative delay in declassifying and releasing the confidential ITC report had any effect on petitioners ability to participate in the administrative review. As a practical matter, information available under APO did not contradict and could not alter the conclusions to be drawn from the information presented in the public version of the ITC's report. and this report was available to petitioners two months before comments on the preliminary results in this review were due. Even so, as a result of the delay in releasing the confidential ITC report, we offered petitioners the opportunity to amplify their comments on the ITC's investigation in their rebuttal comments. Petitioners chose not to submit any rebuttal comments.

Comment 12: Petitioners claim that the determinations by the ITC and the Department, that a regional lime

industry in the southwestern United States would not be materially injured or threatened with material injury if the countervailing duty order on lime from Mexico were revoked, are erroneous and not supported by substantial evidence. A review of the record in the ITC's investigation reveals ample support for a finding that revocation of the countervailing duty order would cause material injury, or threaten material injury, to a properly defined regional lime industry. In rejecting petitioners' proposed definition of the regional industry, comprised of CHEMSTAR's plant in Douglas, Arizona and the area within a 200-mile radius of the plant, petitioners argue that the ITC applied an improper legal standard by defining a much larger southwestern region in which imports are currently concentrated, instead of the region in which imports would be concentrated if the order were revoked.

Department's Position: We disagree. In attempting to define the appropriate regional industry that might be affected by the revocation of the countervailing duty order, petitioners have focussed on the potential impact on one plant in southern Arizona and the effect on that plant of imports from one Mexican plant that is directly across the border from it. Petitioners ignore the fact that the countervailing duty order at issue concerns lime from Mexico, not lime from Sonocal, and that injury must be examined in terms of a distinct regional industry, not one plant among many in that region. We note further that the countervailing duty order covers both quicklime and hydrated lime and that CHEMSTAR's Douglas plant produces only quicklime.

The regional industry is properly defined in this case by the commercial realities associated with the transportation costs of lime, which set the practical limits of the market for imports from Mexico to within a few hundred miles of the U.S. border. As stated in the ITC's report, the southwestern United States "constitutes an isolated and insular market" where all of the imports from Mexico are sold, where nearly all production of U.S. producers in that region is consumed and where little of the lime consumed in the region is produced by U.S. procedures located outside the region. Other than projecting a substantial increase in imports from Sonocal, petitioners provide no evidence that the actual parameters of the southwestern region will change.

While it is apparent that, as the producer geographically closest to Sonocal, CHEMSTAR's Douglas plant

would be most affected by any increase in Sonocal's exports of quicklime, it does not follow that imports from Sonocal compete only with the Douglas plant. The impact of imports from Sonocal on other producers in the region, particularly those of hydrated lime, as well as the imports into this region from other Mexican exporters that do not compete with the Douglas plant must also be taken into account in any injury determination; all imports of Mexican lime would continue to be subject to countervailing duties if there were an affirmative determination of injury.

Comment 13: Petitioners argue that, based on ample evidence in the record. the ITC concluded that revocation would likely result in significant underselling by Mexican lime imports, that the volume effect of revocation would be substantial, and that even the current low levels of Mexican imports had already had a noticeable effect on the southwestern regional industry. In addition, petitioners argue that the ITC underestimated Sonocal's ability to export, made assumptions that grossly understated the imports that would occur during the first year after revocation, and apparently was unaware of information indicating that a substantial portion of Sonocal's production capacity, formerly committed to a domestic purchaser, may now be freed up and available for export to the United States. Finally, petitioners claim that, in examining the condition of the southwestern regional industry in 1987. the ITC apparently concluded that there was no correlation between the performance of the industry and imports whereas the record clearly shows such a correlation despite the low level of consumption that imports accounted for in 1987.

REBASA asserts that petitioners misinterpret the substantial evidence standard when alleging that the ITC's determination is not based on substantial evidence on the record. ITC determinations must be based on substantial evidence in the record as a whole, rather than segregated parts of the record. Although isolated fragments of the administrative record may contain indications of potentially injurious effect, petitioners' allegations ignore the fact that the ITC record, as a whole, indicates that there would be no material injury, or threat of material injury, to the southwestern United States lime industry if the countervailing duty order were revoked.

Department's Position: We disagree with REBASA's characterization of the ITC's role in this injury determination.

The ITC issued a report, not a legally enforceable determination. The Department is making the enforceable determination that must meet the substantial evidence standard and which is subject to judicial review.

The ITC's report demonstrated that, during the 1986-88 period, the lime industry in the southwestern region of the United States experienced increases in the following areas: Capacity utilization, consumption, domestic shipments, employment, inventories, production and productivity. In addition, the average unit value declined one percent, unit labor costs decreased seven percent, and the financial performance of the industry improved. Import penetration from Mexico never exceeded three percent, despite a substantial increase in exports of quicklime in 1987 at prices that were generally below average U.S. prices.

Within this regional industry, there were substantial differences between the performance of quicklime and hydrated lime. For quicklime, apparent consumption increased 29 percent, capacity utilization increased from 58 to 72 percent, domestic shipments increased 29 percent, and the average unit value increased six percent. For hydrated lime, apparent consumption decreased 24 percent, capacity utilization decreased from 78 to 53 percent, domestic shipments decreased 26 percent, and the average unit value decreased nine percent. Even in 1987, when imports from Sonocal increased significantly, almost all of the economic indicators relating to U.S. quicklime producers showed increases, whereas almost all the economic indicators relating to hydrated lime showed decreases. Consumption of quicklime was up 10 percent from 1986 to 1987 while consumption of hydraded lime dropped 20 percent.

The experience with Sonocal's exports in 1987, when a low rate of estimated countervailing duties was collected as a result of confusion over the appropriate rate, leads to the conclusion that shipments from Sonocal could increase significantly above 1987 levels if the countervailing duty order is revoked. (Petitioners' most adverse assumptions about Sonocal's ability to export indicate that the market penetration of Mexican lime into the southwestern region could perhaps double from its high point in 1987 to six percent.) The 1987 experience also suggests that revocation will probably result in significant underselling with respect to imports of quicklime from Mexico, which accounts for the vast majority of Mexicar lime imports.

However, there was an absence of significant price suppression in 1987 as imports increased.

Although there would be some impact on the regional industry as a result of increased imports from Mexico and there may be some instances of adverse price impact associated with this increase, particularly on some individual producers, the Department determines that such increases would not be felt to the extent of material injury and the maximum potential effects of revocation will be quite small.

#### Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on lime from Mexico. The effective date of the revocation is August 24, 1986.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and refund any cash deposits of estimated countervailing duty made on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 24, 1986.

Further, as a consequence of this revocation, the changed circumstances administrative review initiated on August 2, 1988 (53 FR 29076) concerning the sale of Sonocal to Bomintzha S.C.L (preliminary results of review published January 17, 1989 (54 FR 1753)) and the administrative review of calendar year 1987 initiated on December 5, 1988 (53 FR 48951) are terminated. Entries of this merchandise exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1986 are still subject to countervailing duties, and the administrative review initiated on October 20, 1987 (52 FR 38952) will proceed.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b) and (c)) and sections 355.22(h)(1) and 355.25(d)(1) and (d)(3) of the Commerce Regulations in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22 and 355.25).

Dated: November 22, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-28076 Filed 11-29-89; 8:45 am] BILLING CODE 3510-DS-M

[C-201-004]

Toy Balloons (Including Punchballs) and Playballs From Mexico; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order.

**SUMMARY:** The Department of Commerce has information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on toy balloons (including punchballs) and playballs from Mexico. Because the U.S. industry is not interested in having the United States Trade Representative refer this case to the International Trade Commission to conduct a section 332 investigation and, consequently, is not interested in maintaining the countervailing duty order, we intend to revoke the order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: August 24, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On December 27, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 57532) a notice of final affirmative countervailing duty determination and countervailing duty order on toy balloons (including punchballs) and playballs ("toy balloons") from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise, which was duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade ("GATT"). Consistent with our earlier positions in "Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order" (47 FR 44129; October 6, 1982) and "Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary
Results of Administrative Review and
Tentative Determination to Revoke
Countervailing Duty Order" (50 FR
19561; May 9, 1985), the Department has
concluded that it lacks the authority
under Article VI of the GATT and
section 303(a)(2) of the Tariff Act of
1930, as amended ("the Tariff Act"), to
levy countervailing duties on duty-free
imports from Mexico entered on or after
August 24, 1986 absent a determination
regarding injury to the domestic
industry.

In order to fulfill our domestic obligations, we have developed procedures whereby the U.S. International Trade Commission ("ITC") will, at the request of the United States Trade Representative ("USTR"), conduct an investigation pursuant to section 332 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of the industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order on toy balloons from Mexico.

On September 20, 1989, we sent letters to all domestic interested parties on the Department's service list informing them of these procedures. In order to determine whether there was any interest in USTR requesting an investigation pursuant to section 332 on duty-free imports of toy balloons from Mexico, we requested that interested parties submit a statement of interest within 30 days of the date of receipt of our letter. We stated that if we received a statement of interest, we would urge USTR to request that the ITC conduct an investigation pursuant to section 332. We further stated that, in the absence of a statement of interest, we would initiate procedures to revoke the countervailing duty order on toy balloons from Mexico. We received no response.

#### Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is not classified solely

according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Mexican toy balloons (including punchballs) and playballs. Balloons and punchballs are inflatable, thin-walled articles made by dipping non-porous forms (called "mandrels") in natural latex. Punchballs have slightly thicker walls than balloons and are sold packaged with bands. A playball is a hollow sphere produced from polyvinyl chloride (a thermoplastic resin) and other thermoplastics that will bounce when inflated with air and which yields diameters from 4 to 20 inches. Playballs are not nylon wound or made of rubber, and are not to be confused with sportballs (used in athletic activities). Playballs are not an athletic product because they are lighter in weight and smaller in size; however, styles of the vinyl playballs include models resembling footballs, basketballs and other sports-oriented items.

Through 1988, such merchandise was classifiable under item numbers 735.0970, 735.0995, 737.9536 and 737.9836 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 9503.90.50. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

# Initiation, Preliminary Results of Review and Intent To Revoke

We have determined that changed circumstances exist sufficient to warrant initiation of a changed circumstances review. These changed circumstances include: (1) The Government of Mexico's accession to the GATT; (2) our international obligations requiring us not to levy countervailing duties on duty-free imports from GAT1-member countries in the absence of an affirmative injury determination; and (3) the domestic industry's lack of interest in having USTR refer this case to the ITC to conduct a section 332 investigation and, consequently, its lack of interest in maintaining the countervailing duty order on toy balloons from Mexico. Under these circumstances, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of our changed circumstances administrative review.

Thus, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met. Accordingly, we intent to revoke the countervailing duty order on toy balloons from Mexico effective August 24, 1986. The current requirements for

the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday following. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and §§ 355.22 (h)(1) and (h)(4) and 355.25 (d)(1), (d)(2), and (d)(3) of the Commerce Regulations published in the Federal Register on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22 and 355.25).

Dated: November 22, 1989.

#### Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

FR Doc. 89-28077 Filed 11-25-89; 8:45 am] BILLING CODE 3510-DS-M

### U.S. and Foreign Commercial Service Advisory Council; Open Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The U.S. and Foreign
Commercial Service Advisory Council
was established on February 17, 1988, to
advise the Secretary on matters
pertinent to operations, programs and
services of the U.S. and Foreign
Commercial Service (US&FCS) and its
related worldwide export promotion
programs.

Time and Place: December 12, 1989, from 9 a.m. to 12 noon. The meeting will take place at the Main Commerce Building, Room 5851, 14th Street and Constitution Avenue, NW., Washington, DC 20230

#### Agenda

- Briefings on the current state of US&FCS operations by principal officials of the agency.
- Discussion of strategic review of US&FCS programs.
  - 3. Other matters as appropriate.

Public Participation: The meeting will be open to public participation; the last five minutes will be set aside for comments and questions. Approximately 4 seats will be available on a first-come, first-served basis. Please notify Mr. Kevin Mulvey of your intent to attend.

FOR FURTHER INFORMATION CONTACT:
Mr. Kevin C.W. Mulvey, Executive
Secretary, U.S. and Foreign Commercial
Service Advisory Council, Room 3804,
International Trade Administration,
Department of Commerce, Washington,
DC 20230.

Dated: November 22, 1989.

Susan C. Schwab,

Director General.

[FR Doc. 89-28024 Filed 11-29-89; 8:45 am]

# COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Negotiated Settlement on Import Limits and Guaranteed Access Levels for Certain Cotton Textile Products Produced or Manufactured in Guatemala

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a restraint period and limit.

EFFECTIVE DATE: November 22, 1989.

FOR FURTHER INFORMATION CONTACT:
Naomi Freeman, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 377–4212. For information on the
quota status of this limit, refer to the
Quota Status Reports posted on the
bulletin boards of each Customs port or
call (202) 566–5810. For information on
embargoes and quota re-openings, call
(202) 377–3715.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Guatemala agreed to establish a bilateral agreement, effected by a Memorandum of Understanding dated November 9, 1989, for cotton textile products in Categories 347/348 for four consecutive periods—July 1, 1989 through February 28, 1990, March 1, 1990 through December 31, 1990, January 1, 1991 through December 31, January 1, 1992 through December 31, 1992. The United States Government will control

imports in Categories 347/348 for the first period of the agreement.

Also, the agreement establishes Guaranteed Access Levels for Categories 347/348 for three one-year periods beginning March 1, 1990 and extending through December 31, 1992.

Beginning on January 1, 1990, for goods to be re-exported from Guatemala to the United States during the period March 1, 1990 through December 31. 1990, U.S. Customs will start signing the first section of form ITA-370P for shipments of U.S. formed and cut parts in Categories 347/348 that are destined for Guatemala and subject to the Guaranteed Access level established for Categories 347/348. These products, which are assembled in Guatemala from parts cut in the United States from fabric formed in the United States, are governed by HTS number 9802.00.8010 or by Chapter 62 Statistical Note 3 of the Harmonized Tariff Schedule.

Interested parties should be aware that shipments of cut parts in Categories 347/348 must be accompanied by a form ITA-370P, signed by a U.S. Customs officer, prior to export from the United States for assembly in Guatemala in order to qualify for entry under the Guaranteed Access Program.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 29086, published on July 11, 1989.

Requirements for participation in the Special Access Program are available in Federal Register notices 51 FR 1208, published on June 11, 1986; and 52 FR 26057, published on July 10, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

# Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of Commerce, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on July 5, 1989 from the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of cotton textile products in Categories 347/348, produced or manufactured in Guatemala

and exported during the period April 26, 1989 through April 25, 1990.

Effective on November 22, 1989, you are directed to amend the current restraint period for Categories 347/348 to begin on July 1, 1989 and extend through February 28, 1990 at an increased level of 1,000,000 dozen.

Textile products in Categories 347/348 which have been exported to the United States prior to July 1, 1989 shall not be subject to this directive.

Charges already made to the limit for Categories 347/348 for the period July 1-12, 1989 shall be retained. You are directed to deduct the following charges made to the limit for goods imported during the period April 26, 1989 through June 30, 1989:

Category	Amount to be deducted
347348	107,481 dozen. 78,874 dozen.

Beginning on January 1, 1990, U.S. Customs is directed to start signing the first section of form ITA-370P for shipments of U.S. formed and cut parts in Categories 347/348 that are destined for Guatemala and re-exported to the United States during the period March 1, 1990 through December 31, 1990.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-28069 Filed 11-29-89; 8:45 am]

## Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Macau

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner of Customs increasing and re-opening a limit.

EFFECTIVE DATE: December 1, 1989.

FOR FURTHER INFORMATION CONTACT:
Diana Solkoff, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 377–4212. For information on the
quota status of this limit, refer to the
Quota Status Reports posted on the
bulletin boards of each Customs port or

<sup>&</sup>lt;sup>1</sup> The limit has not been adjusted to account for any imports exported after June 30, 1989.

call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended [7 U.S.C. 1854).

The current limit for Categories 445/ 446 is being increased for swing and carryforward. As a result, the limit, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 51297, published on December 21, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

#### Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury. Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 16, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced, or manufactured in Macau and exported during the twelvemonth period which began on January 1, 1989 and extends through December 31, 1989.

Effective on December 1, 1989, the directive of December 16, 1988 is amended further to increase to 80,259 dozen 1 the limit for Categories 445/446, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Macau.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the Foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo.

Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 89-27959 Filed 11-29-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcing the Implementation of Import Restraint Limits Based on Date of Entry for Certain Textiles and Textile Products Produced or Manufactured in Thailand

November 24, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

## FOR FURTHER INFORMATION CONTACT:

Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

#### SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended [7 U.S.C. 1854).

On November 6, 1989, a notice was published in the Federal Register (54 FR 46643) announcing that, effective January 1, 1990, CITA reserves the right to implement certain import restraint limits based on date of entry rather than date of export for countries with agreements that have expired or will expire after November 6, 1988.

The purpose of this notice is to advise the public that all new import restraint limits resulting from Article 3 and section 204 calls on Thailand on and after January 1, 1990 shall be implemented by CITA based on date of entry, regardless of the date of export. Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-27960 Filed 11-29-89; 8:45 am] BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

**Public Information Collection** Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: The Impact of Aids on the U.S. Army: Interviews with Seropositive Applicants for Military Service; No Form; and OMB Control Number 0704-0282

Type of Request: Reinstatement.

Average Burden Hours/Minutes Per Response: .75 hours.

Frequency of Response: One response per respondent.

Number of Respondents: 1,200. Annual Burden Hours: 1,900. Annual Responses: 1,200.

Needs and Uses: Interview survey is to be used by contractor trained personnel to interview military recruit applicants who have been identified as positive for HIV to determine risk factors for the disease. The interview will be conducted in a single session by contractor trained interviewers who will not know the antibody status of the subject. The survey instrument and analysis and summary files will not contain personal identifier information and linking of individuals to their specific responses will not be possible. Information gained will be of unique importance for designing intervention programs, for targeting high risk groups for screening and health education and for assessing the efficacy of prevention efforts. Data currently available may not reflect the current state of the epidemic. This research effort will provide a broad-based, national surveillance system for determining the geographic spread of the epidemic and the risk factors most associated with its spread.

Affected Public: Individuals or households.

Frequency: One per respondent. Respondent's Obligation: This is a voluntary survey.

OMB Desk Officer: Dr. J. Timothy Sprehe

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at the Office of Management and Budget, Desk Officer. Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/ DIOR, 1215 Jefferson Davis Highway. Suite 1204, Arlington, Virginia 22202-4302.

Dated: November 24, 1989.

#### L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-27988 Filed 11-29-89; 8:45 am] BILLING CODE 3810-01-M

<sup>1</sup> The limit has not been adjusted to account for any imports exported after December 31, 1988.

## Office of the Secretary

# Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 2, 1990; Tuesday, January 9, 1990; Tuesday, January 16, 1990; Tuesday, January 23, 1990; and Tuesday, January 30, 1990 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 93–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," [5 U.S.C. 552b.[c] [2]), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.[c] (4)).

Accordingly, the Deputy Assistant
Secretary of Defense [Civilian Personnel
Policy] hereby determines that all
portions of the meeting will be closed to
the public because the matters
considered are related to the internal
rules and practices of the Department of
Defense [5 U.S.C. 552b.(c) (2)), and the
detailed wage data considered from
officials of private establishments with a
guarantee that the data will be held in
confidence [5 U.S.C. 552b(c) (4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301. Dated: November 24, 1989.

#### L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense. [FR Doc. 89–27989 Filed 11–29–89; 8:45 am] BILLING CODE 3810–01-M

#### Department of the Air Force

## USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Advisory Group for the Air Force Communications Command (AFCC) Standard Systems Center will meet on 8 January 1990, from 8:00 a.m. to 5:00 p.m. at the Standard Systems Center Headquarters, Building 888, Gunter AFB, Alabama.

The purpose of this meeting is to review the activities of the Software Center of Excellence that AFCC has established at the Standard Systems Center.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraph (3) thereof.

For further information, contact the Scientific Advisory Board Secretariat at [202] 697–4811.

#### Patsy J. Conner,

Air Force Federal Register Liaison Officer. [FR Doc. 89–27976 Filed 11–29–89; 8:45 am] BILLING CODE 3910–01-M

#### Department of the Army

#### Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18–19 December 1989. Time of Meeting: 0830–1700, 18 December 1989: 0830–1500, 19 December 1989.

Place: The Pentagon, Washington, DC.
Agenda: The Army Science Board Ad Hoc
Subgroup on Software in the Army will meet
for discussions focused on major problem
areas. Additional discussions will center
around the input from the Signal Center on
the subject of career fields and their
retention. This meeting is open to the public.
Any interested person may attend, appear
before, or file statements with the committee
at the time and in the manner permitted by
the committee. The ASB Administrative
Officer, Sally Warner, may be contacted for
further information at (202) 695-0781/0782.

#### Sally A. Warner,

Administrative Officer, Army Science Board.
[FR Doc. 89–28089 Filed 11–29–89; 8:45 am]
BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

#### GENERAL SERVICES ADMINISTRATION

# NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a rquest to review and approve within 20 days of receipt an expedited review of an information collection requirement concerning Bid, Performance, and Payment Bonds.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, (202) 523–3847.

SUPPLEMENTARY INFORMATION: a. Purpose: "Bond" means a written instrument executed by the contractor (the "principal"), and a second party (the "surety" or "sureties"), to assure fulfillment of the principal's obligations to a third party (the "obligee" or "Government"), identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

The Miller Act (40 U.S.C. 270a-270e) requires performance and payment bonds for any construction contract exceeding \$25,000; unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. Bonds may be required for other contracts when it is deemed appropriate.

The bond(s) are retained by the obligee (the Government) until the principal's (the contractor's) obligation is fulfilled.

This submission requests a revision of OMB approval of an information collection requirement in the Federal Acquisition Regulation (FAR). The information collection requirement in the FAR remains unchanged. However, the burden estimated has been decreased because of the revisions of estimates of usage governmentwide

based upon decreased use by individual sureties since only one individual surety need comply in lieu of the current requirement for two (applies to SF's 24, 25, 25–A, 34, 35, and 1416).

b. Annual reporting burden: The annual reporting burden is estimated as follows: Respondents, 19,075; responses per respondent, 4.87; total annual responses, 92,895; preparation hours per response, 42; and total response burden hours, 39,016.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0045, Bid, Performance, and

Dated: November 22, 1989.

Margaret A. Willis,

Payment Bonds.

FAR Secretariat.

[FR Doc. 89-28026 Filed 11-29-89; 8:45 am] BILLING CODE 6820-JC-M

#### Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 [44 U.S.C. chapter 35], the Federal Acquisition Regulation (FAR)
Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve within 20 days an expedited review of an information collection requirement concerning Affidavit of Individual Sureties

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Office of Federal Acquisition Policy, (202) 523–3847.

SUPPLEMENTARY INFORMATION:

a. Purpose: The Affidavit of Individual Surety (Standard Form (SF) 28) will be used by all executive agencies including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. In order to qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the

maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other format exists for the collection of this information.

The information of SF 28 will be used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

b. Annual reporting burden: The annual reporting burden is estimated as follows: Respondents, 500; responses per respondent, 1.43; total annual responses, 715; preparation hours per response, 3; and total response burden hours, 2,145.

OBTAINING COPIES OF PROPOSALS; Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0001, Affidavit of Individual Surety (SF 28).

Dated: November 22, 1989.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 89-28027 Filed 11-29-89; 8:45 am] BILLING CODE 6820-JC-M

### DELAWARE RIVER BASIN COMMISSION

## Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 6, 1989 beginning at 1 p.m. in the Goddard Conference Room of its offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11 a.m. at the same location and will include status reports on the Upper Delaware ice jam project and amendment of Compact section 15.1(b) to fund the Francis E. Walter Reservoir project.

The subjects of the hearing will be as follows:

A Proposed Amendment to the Comprehensive Plan to Delete the Hackettstown, Trexler, Aquashicola and Maiden Creek Reservoirs. Since the 1962 incorporation of these reservior projects into the Commission's Comprehensive Plan, various studies and events have determined that their construction is no longer recommended. As continuation of these projects in the Comprehensive Plan could, under

Commission regulations, subject other proposed projects to unnecessary review by the Commission, these reservoir projects are now proposed for deletion from the comprehensive Plan.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article II and/or Section 3.8 of the

Compact:

1. Borough of Brooklawn, Water
Department D-85-18 CP RENEWAL. An
application for the renewal of a ground
water withdrawal project to supply up
to 45.0 million gallons (mg)/30 days of
water to the applicant's distribution
system from Well Nos. 1, 3 and 4.
Gommission approval on May 29, 1985
was limited to three years and will
expire unless renewed. The applicant
requests that the total withdrawal from
all wells remain limited to 15 mg/30
days. The project is located in
Brooklawn Borough, Camden County,
New Jersey.

2. E. I. duPont deNemours & Company, Inc. D-85-32 RENEWAL. An application for the renewal of a ground water withdrawal project to supply up to 57.3 mg/30 days of water to the applicant's industrial facility from Well Nos. 3, 5, 6, and decontamination Well No. 46. Commission approval on August 28, 1985 was limited to four years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remains limited to 57.3 mg/30 days. The project is located in Greenwich Township, Gloucester County, New Jersey.

3. Panther Creek Energy, Inc. D-87-66 (Revised). An application for revision of a previously approved withdrawal project for a proposed 80 megawatt electric generation plant. The revision includes a relocation of the point of withdrawal and a reduction in the quantity of withdrawal. Up to 67.0 mg/ 30 days (previously 103.2 mg/30 days) of ground water will be withdrawn from the inundated mine cavities known as the Lansford Mine Pool for use as cooling and process water in the generation facilities. Low grade anthracite coal breaker refuse, supplied from culm banks on approximately 300 acres near the plant site, will serve as the principal fuel for the proposed facility. The withdrawal taking point is located in the Borough of Summit Hill, and the proposed generation plant will be located in the adjacent Nesquehoning Borough, both municiplities of Carbon County, Pennsylvania.

4. Borough of Palmyra D-88-29 CP.
An application to upgrade and expand a sewage treatment plant to process

wastewater flow from primarily residential sources within Palmyra Borough, Burlington County, New Jersey. The existing plant is designed to treat 0.53 million gallons per day (mgd) and the proposed plant is designed to provide high quality secondary treatment of 1.05 mgd for the design year 2009. Treated effluent will continue to discharge through the existing outfall to the Delaware River in Water Quality Zone 3.

5. Georgia Pacific Corporation D-8956. An application to upgrade an existing 0.44 mgd capacity industrial wastewater treatment plant that serves the applicant's gypsum linerboard paper mill located on Derousse Avenue in Pennsauken Township, Camden County, New Jersey. The applicant proposes to construct an aerated stabilization tank and related treatment facilities to reduce BOD and provide a buffer for flow fluctuation. The treated effluent will continue to discharge to the Delaware River.

6. Draper-King Cole, Inc. D-89-66. An application to replace the withdrawal of water from Well No. 14 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 14A be limited to 43.2 mg/30 days, and that the total withdrawal from all wells remain limited to 75.0 mg/30 days. The project is located in the Town of Milton, Sussex County, Delaware.

7. Town of Frederica D-89-73 CP. An applicant for approval of a ground water withdrawal project to supply up to 3.9 mg/30 days of water to the applicant's distribution system from existing Well Nos. 1, 2, 3, and 4 (Well Nos. 1 and 2 are for fire/emergency use only), and to limit the withdrawal from all wells to 3.9 mg/30 days. The project is located in the Town of Frederica, Kent County, Delaware.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: November 21, 1989.

Susan M. Weisman,

Secretary.

[FR Doc. 89-28015 Filed 11-29-89; 8:45 am]

## DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

Request for Data and Information Under the Bilingual Education: State Educational Agency Program for Fiscal Year 1988

## **Programmatic Information**

This program provides financial assistance to State educational agencies (SEAs) to collect and report data and information on limited English proficient (LEP) persons under section 7032 of the Bilingual Education Act (20 U.S.C. 3302), and 34 CFR Part 548. SEAs are required to report data and information to the Secretary in accordance with section 7032(b) of the Act and 34 CFR 548.10.

# Date for Submitting Data and Information

Fiscal year 1988 SEA grantees are required to submit this report containing data and information on LEP persons to the U.S. Department of Education by December 22, 1989.

#### Addresses

Information should be sent to Luis A. Catarineau, U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, SW. (Room 5086, Switzer Building), Washington, DC 20202–6641.

## **Further Information**

For further information contact Luis A. Catarineau. Telephone: (202) 732–5707.

Authority: 20 U.S.C. 3302(b). Dated: November 24, 1989.

#### Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 89-27987 Filed 11-29-89; 8:45 am] BILLING CODE 4000-01-M

### DEPARTMENT OF ENERGY

Financial Assistance Award; Intention To Award a Grant to the Stanford University Petroleum Research Institute

AGENCY: Bartlesville Project Office, U.S. Department of Energy.

ACTION: Notice of Non-Competitive Financial Assistance (Grant) Award with Stanford University Petroleum Research Institute (SUPRI).

SUMMARY: The Department of Energy (DOE), Barlesville Project Office, announces that pursuant to 10 CFR 600.7

(b)(2)(i) criteria (A) and (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center to Stanford University Petroleum Research Institute (SUPRI) for the continuation of their effort entitled "Research on Oil Recovery Mechanisms in Heavy Oil Reservoirs."

Scope: Based upon the authority of 10 CFR 600.7(b)(2)(i) criteria (A) and (D), the objective of this Grant is for Stanford University Petroleum Research Institute to continue conducting basic research on heavy oil recovery by various EOR methods. The studies concern technology useful to all enhanced oil recovery techniques. These include methods of reservoir definition such as pressure transient testing, analysis of well logs and tracer data, and experimental data on properties of reservoir fluids and rocks. In addition, a test of a SUPRI developed process to improve steam injection by using foam additives will be conducted. The intended research will (1) establish flow properties studies in order to assess the effect of reservoir parameters on permeability and capillary pressure, (2) study mechanisms governing the combustion process in order to optimize in-situ combustion design for reservoirs. (3) identify the additives that improve mobility control and study the mechanisms of foam flow in porous media by experiments and numerical modeling, (4) develop improving existing reservoir evaluation techniques, (5) provide technical and field support services in design and monitoring field projects, and (6) transfer the learned technologies to industry, other research groups and oil operators through publications and workshops. The Stanford University Petroleum Research Institute will make available the facilities and technical expertise required for this project.

The term of the grant is for a threeyear period at an estimated value of \$2.250,000.00.

## FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–165, Pittsburgh, PA 15236, Attn: Norey B. Laug; Telephone: AC (412) 892– 4827.

Dated: November 15, 1989.

#### Gregory J. Kawalkin,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 89-28087 Filed 11-29-89; 8:45 am]

BILLING CODE 6450-01-M

## Office of Fossil Energy

## National Coal Council; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) and in accordance with section 101-6.1015 title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council (NCC) has been renewed for a two-year period ending December 31, 1991. The NCC will continue to provide advice, information, and recommendations to the Secretary of Energy, on a continuing basis. regarding general policy matters relating to coal issues.

Council members are chosen to assure a well balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The NCC also has members who represent interests outside the coal industry, including environmental interests, labor, research. universities, and tribal government. Membership and representation of all interests will continue to be determined in accordance with the requirements of FACA, section 624(b) of the DOE Organization Act (Pub. L. 95-91), and implementing regulations.

The renewal of the National Coal Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the Department of Energy Organization Act (Pub. L. No. 95–91), and the implementing regulations.

Further information regarding this advisory committee may be obtained from Elinor C. Donnelly (202) 586–3448.

Issued at Washington, DC on November 27,

## Howard H. Raiken,

Advisory Committee, Management Officer. [FR Doc. 89–28085 Filed 11–29–89; 8:45 am] BILLING CODE 8950–01-M

#### National Petroleum Council; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (FACA) and in accordance with section 101–6.1015 title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council (NPC) has been renewed for a two-year period ending December 31, 1991. The NPC will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the petroleum industry, and from large and small companies. The NPC also has members who represent interests outside the petroleum industry. including representatives from environmental, labor, research, universities, tribal government, and state utility regulatory commissions. Membership and representation of all interests will continue to be determined in accordance with the requirements of FACA, and section 624(b) of the DOE Organization Act (Pub. L. 95-91), and implementing regulations. The renewal of the National Petroleum Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Committee Act (Pub. L. 92-463), the Department of Energy Organization Act (Pub. L. 95-91), and the implementing regulations.

Further information regarding this advisory committee may be obtained from Elinor C. Donnelly (202) 586-3448.

Issued at Washington, DC on: November 27, 1989.

#### Howard H. Raiken,

Advisory Committee, Management Officer. [FR Doc. 89–28086 Filed 11–29–89; 8:45 am] BILLING CODE 6450-01-M

## [ERA Docket No. 87-68-LNG]

Yukon Pacific Corp.; Order Granting Authorization to Export Liquefied Natural Gas and Record of Decision in Compliance with the National Environmental Policy Act

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order granting
authorization to export natural gas from
Alaska and record of decision.

SUMMARY: The office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order on November 16, 1989, granting Yukon Pacific Corporation authorization to export liquefied natural gas (LNG) from Alaska to Pacific Rim nations. Yukon Pacific plans to build the Trans-Alaska

Gas System (TAGS) to transport gas from the North Slope of Alaska south to Valdez, where it would be converted to LNG and exported to East Asia by tanker.

In conjunction with that order, FE is hereby issuing a Record of Decision pursuant to the regulations of the Council on Environmental Quality (40 CFR part 1505) and the DOE's guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA).

A copy of Order 350, issued in ERA Docket No. 87–68–LNG, is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

P.J. Fleming, Office of Fuels Programs,
Fossil Energy, U.S. Department of
Energy, Forrestal Building, Room 3F–
070, 1000 Independence Avenue, SW.,
Washington, DC 20585, (202) 586–4819;
Carol M. Borgstrom, Director, Office of
NEPA Project Assistance, U.S.
Department of Energy, Forrestal
Building, Room 3E–080, 1000
Independence Avenue, SW.,
Washington, DC 20585, (202) 586–4600.

### SUPPLEMENTARY INFORMATION:

## I. Introduction

Pursuant to the Council on Environmental Quality Regulations implementing the procedural provisions of NEPA <sup>1</sup> and the DOE's guidelines <sup>2</sup> for compliance with NEPA, FE is issuing this Record of Decision on the application filed by Yukon Pacific on December 3, 1987, for authority to export liquefied Alaskan North Slope natural gas to the Pacific Rim countries of Japan, South Korea, and Taiwan.<sup>3</sup>

#### II. Decision

On November 16, 1989, FE issued Order 350, under section 3 of the NGA, 4 granting Yukon Pacific authority to export up to 14 million metric tons of LNG per year over a term of 25 years commencing on the date of the first

<sup>1 42</sup> U.S.C. 4321, et seq.

<sup>&</sup>lt;sup>2</sup> 52 FR 47662, December 15, 1987.

<sup>&</sup>lt;sup>3</sup> On Jamuary 6, 1989, the authority to regulate natural gas imports and exports was transferred from the Economic Regulatory Administration to the Assistant Secretary for Fossil Energy. DOE Delegation Order No. 0204–127 specifies the transferred functions (54 FR 11436, March 20, 1989).

<sup>4 15</sup> U.S.C. Sec. 717b.

delivery, which is estimated to be in the mid-1990's. The export would involve construction of the TAGS facilities.

The DOE participated as a cooperating agency during the preparation of and has adopted the Trans-Alaska Gas System Final Environmental Impact Statement (FEIS), issued jointly by the Bureau of Land Management (BLM) of the U.S. Department of the Interior and the U.S. Army Corps of Engineers (USACE) in June 1988.5 FE used that FEIS as well as an independent review in assessing the environmental effects of granting the export.

#### III. Project Description

Yukon Pacific proposes to build and operate TAGS to transport gas from the North Slope of Alaska at Prudhoe Bay to Port Valdez on Alaska's southern coast where it would be liquefied and transported by ship to the three Pacific Rim countries. The primary components of the proposed TAGS project would be 796.5 miles of buried, chilled, 36-inch outer diameter natural gas pipeline, with 10 compressor stations along the route. The pipeline would terminate at a proposed liquefaction plant and marine terminal located at Anderson Bay in Port Valdez. The liquefaction plant would include four LNG processor units (to remove impurities from incoming gas, and to reduce the temperature of the gas to -259 degrees Fahrenheit, condensing it to the liquid state for storage and shipping) and four LNG storage tanks. The marine terminal would include two LNG tanker berths and dock facilities for support vessels adjacent to the liquefaction plant.

Natural gas would be provided to the TAGS pipeline at Prudhoe Bay by means of an existing or newly authorized gas conditioning facility.

## IV. Governmental Responsibilities

For Yukon Pacific's proposed project, the issuance of several major permits and authorizations is required before the project can proceed. The lands that would be directly affected by the construction and operation of the project are primarily under the control of the Federal and state governments. A Federal right-of-way grant from the BLM to cross Federal lands and a state rightof-way lease by the Alaska Department of Natural Resources must be approved. A permit is required from the USACE for the placement of fill material and for work in all wetlands along the proposed pipeline alignment and navigable waters. An authorization also is required from FE to export natural gas

<sup>6</sup> FEIS BLM-AK-PT-88-003-1792-910.

and from the Federal Energy Regulatory Commission (FERC) for a place of

export. Yukon Pacific applied for a grant of right-of-way from BLM and the State of Alaska and applied to the USACE under section 404 of the Clean Water Act and section 10 of the River and Harbor Act of 1899 for the required permits. On December 3, 1987, Yukon Pacific filed an application with the DOE for export authorization under section 3 of the NGA. Concurrently, Yukon Pacific sumitted an application to the FERC, under section 3 of the NGA, for authorization to use Anderson Bay as the LNG export site.6

## V. Description of Alternatives

FE had two alternative courses of action in processing Yukon Pacific's application to export natural gas. It could grant the application (with or without conditions) or deny the application (no-action). If FE denied the application the TAGS project would not be cosntructed, no North Slope gas would be converted to LNG and available to overseas markets, and there would be no impacts to the existing environment. If FE granted the application, Yukon Pacific could proceed, subject to obtaining other necessary approvals, with construction of facilities to transport natural gas to tidewater for conversion into LNG for export.

#### VI. Basis for Decision

The principal criterion in choosing whether to approve or disapprove a gas export project is the requirement under section 3 of the NGA that an application to export gas must be approved unless, after opportunity for hearing, it is determined that the export is not consistent with the public interest. In reviewing natural gas export applications, the domestic need for the gas is considered, and any other issues determined to be appropriate in a particular case. Additionally, the environmental implications of granting or denying the export application must be evaluated pursuant to NEPA.

In connection with Yukon Pacific's export proposal, the DOE determined that it was both necessary and appropriate to consider international gas trade policy, the implications of the Alaska Natural Gas Transportation Act of 1976 (ANGTA),7 and the Presidential finding on January 2, 1988, under section 12 of ANGTA, concerning Alaska natural gas exports.8

## A. General Conclusions

FE found that the proposed export would not be inconsistent with the public interest requirements of section 3 of the NGA. In particular, it was determined that this gas supply is not needed to ensure American consumers adequate supplies at reasonable prices. In addition, the TAGS export project is expected to provide important benefits in the areas of energy security, energy production, international relations, and the Alaskan economy. Furthermore, FE concluded that the proposed exports would not be inconsistent with the framework of ANGTA.

## B. Environmental Determination

The BLM and USACE were the lead Federal agencies in conducting an examination of the environmental effects of constructing the TAGS pipeline, LNG facility, marine terminal, and related project components and preparing the FEIS for the TAGS project. Alternatives to the proposed project that were considered in the FEIS included various alternative modes for transporting the North Slope gas, alternative pipeline routes and sites for the LNG plant and marine terminal, and a no-project alternative. Three major alternatives were considered in detail in the FEIS, the proposed project, the Cook Inlet-Boulder Point route and the noaction alternative. The DOE participated as a cooperating agency during the preparation of the FEIS, and the DOE utilized the FEIS (which was adopted as a DOE FEIS) 9 as well as an independent analysis to assess the environmental effects of granting or denying the export authorization.

## 1. Conceptual Gas Conditioning Facility

The FEIS did not consider gas conditioning facilities (GCF) in the Prudhoe Bay area as part of the TAGS project. Rather, such facilities were viewed as a connected action to be evaluated with regard to environmental effects when the plant configuration and technology are more certain. However, the FEIS conceptually described the GCF that would be needed to produce pipeline quality natural gas for TAGS and analyzed and discussed the potential environmental consequences as they presently exist for the construction and operation of the conceptual GCF if it was located at Prudhoe Bay adjacent to Atlantic Richfield Company's existing Central Gas Conditioning Facility. The ownership of the conceptual GCF would

<sup>\*</sup> FERC Docket No. CP88-105-000.

<sup>7 15</sup> U.S.C. 719 et seq.

<sup>\* 53</sup> FR 999 (January 15, 1988).

<sup>•</sup> DOE/EIS-0139.

be determined by the North Slope gas producers, Yukon Pacific, and the State of Alaska.

The unconstructed Alaska Natural Gas Transportation System (ANGTS) holds a conditional certificate from the FERC to build and operate a gas conditioning plant, designated the Alaska Gas Conditioning Facility (AGCF), at Prudhoe Bay to support the proposed ANGTS project.10 The TAGS FEIS is based on the assumption that the ANGTS facilities to deliver North Slope gas by means of a pipeline across Ataska and Canada to markets in the lower 48 states will be built. The timing for construction and operation of the ANGTS project would be when the market conditions make it a viable project.

The FEIS indicated that no significant cumulative effects are expected from the construction and operation of the AGCF and a stand-alone GCF for TAGS located several miles south of the area identified for the AGCF.

2. Alternative Transportation Modes and Systems Considered

Alternative modes considered for transporting North Slope gas were land routes, including transportation by dense-phase and methanol pipelines, railway, and monorail; marine routes, including ice-breaking tankers and submarines; air routes, including airplanes, helifloats, and dirigibles; and possible combinations of various modes. None of these alternative modes of transportation were considered feasible to design or operate, and were eliminated from further consideration.

The injection of natural gas into crude oil carried by the existing Trans-Alaska Pipeline System (TAPS) hot oil pipeline from Prudhoe Bay to Port Valdez was not considered a viable option to TAGS because the natural gas, as a liquid, would not be compatible with the TAPS design or operating requirements.

3. Statewide Alternative Pipeline Routes and Coastal LNG Terminal Sites

Alternative pipeline routes and LNG plant sites were considered in various regions of Alaska. The analysis concluded that only the southcentral Cook Inlet and Prince William Sound-Valdez area provided feasible alternatives for the pipeline, liquefaction plant, and marine terminal. In western Alaska limited tanker access related to sea ice as well as other factors eliminated the region from further consideration. Pipeline distance to southeast ports and the extensive mountainous terrain that would have to be crossed would be insurmountable obstacles to the TAGS project and eliminated the southeast region from further consideration.

4. Regional Alternative Pipeline Routes and Sites for LNG Facilities/Terminals

Along with Yukon Pacific's proposed pipeline route to Anderson Bay, one major route alternative and six alternative LNG plant and marine terminal locations were evaluated within the Cook Inlet and Prince William Sound regions for project feasibility. The Cook Inlet alternative pipeline alignment would deviate from Yukon Pacific's proposed route near Livengood (milepost 395 of proposed TAGS) and proceed south to the Cook Inlet area where three alternative liquefaction plant and marine terminal locations at Harriet Point, Boulder Point, and Cape Starichkof were considered. In the Prince William Sound-Anderson Bay area, three other alternative liquefaction plant and marine terminal locations at Gravina, Gold Creek, and Robe Lake were considered.

After examining the alternative tidewater sites, the FEIS identified the TAGS project's Anderson Bay site as the preferred location in Prince William Sound, and Boulder Point was determined to be the best Cook Inlet alternative. Neither of the Cook Inlet alternatives to Cape Starichkof nor Harriet Point offered engineering, environmental, cost, or safety advantages over location of a facility at Boulder Point. The cost, time, and additional impacted area associated with the Cape Starichkof and Harriet Point sites make them inferior options. None of the three alternatives considered for the Prince William Sound region was ranked superior to Yukon Pacific's Anderson Bay site.

5. Comparison of Proposed Anderson Bay Route with the Cook Inlet-Boulder Point Alternative

The basic project components for the Cook Inlet-Boulder Point alternative would be similar to the proposed TAGS project. The pipeline route from Prudhoe Bay to Livengood for the proposed TAGS project and the Cook Inlet alternative would be the same. Likewise, both projects' approach to basic construction techniques would be the same for the remainder of the route. However, at Livengood, the Cook Inlet alternative would diverge from the proposed TAGS Anderson Bay alignment, to an LNG plant and marine terminal at Boulder Point on the Kenai Peninsula. The Cook Inlet alternative would require a 15-mile subsea crossing of Cook Inlet to reach Boulder Point. The major difference in construction techniques would be for those conditions specific to the Cook Inlet alternative route, such as the subsea pipeline under Cook Inlet, the approach to the pinch point near Denali National Park and Preserve where construction is limited, and the major access roads required for access to the compressors located in Minto and Susitina flats.

The FEIS analyzed and compared the potential environmental consequences of constructing and operating a pipeline using the Cook Inlet alternative route from Livengood with the environmental consequences anticipated for the proposed TAGS project. It was determined that, on balance, the overall impacts to the environment anticipated from either the proposed route to Anderson Bay or from the Cook Inlet alternative would be similar in scope and range with regard to air quality, geology, noise, socioeconomics, surface and ground watet marine environments, fish, and subsistence. The Anderson Bay route would be expected to have greater potential to affect threatened or endangered species, whereas the Cook Inlet alternative to Boulder Point would have greater potential impacts in several areas, notably land use, transportation, recreation, aesthetics, and cultural resources.

As summarized in the FEIS, the socioeconomic impacts from the proposed TAGS project and the Cook Inlet alternative routing would be major. The impacts to air quality, vegetation, wetlands, recreation, aesthetics, land use, and wilderness would be moderate. Minor impacts would occur related to noise, geology, surface, water and ground water, marine environments, fish, and wildlife. Transportation, subsistence, and cultural resources are

<sup>10</sup> ANGTS is a privately sponsored project which received Presidential and Congressional approval pursuant to the provisions of ANGTA. The northern portion of the proposed TAGS pipeline would parallel the proposed route of ANGTS. Although substantial engineering design has been completed for ANGTS, work has been suspended until natural gas markets stabilize and financing prospects improve for the participants in the project's construction At this time, there is no firm schedule for remobilization. As yet, no North Slope gas has reached the lower-48 states. Although some federal permits have been issued to ANGTS, the permitting requirements for use of state ownership lands in Alaska have not been completed, and no state authorizations have been issued. Work on state permits is also suspended.

subject to minor impacts. Impacts to threatened or endangered species would

be negligible.

The site specific impacts to the natural environment are of about the same nature and degree for both alternatives because they would use the same technology in similar environments, the Cook Inlet subsea crossing excepted. The primary difference between these alternatives is where the impacts occur. The Cook Inlet alternative route would require transit through a number of state and federal parks, important subsistence and recreation areas, and wildlife areas, including proposed Minto Flats State Game Refuge, Denali National Park and Refuge, the Kenai National Wildlife, Refuge, Nancy Lake State Recreational Area, and Captain Cook State Park. The proposed Anderson Bay route follows an existing transportation and utility corridor which includes the constructed TAPS pipeline, a segment of the approved but unconstructed ANGTS pipeline, and various state highway rights-of-way.

Finally, an Act of Congress would be required for the Cook Inlet, alternative to cross the Denali National Park and Preserve under title XI of the Alaska National Interest Lands and Conservation Act (ANILCA). This action requires a finding by the National Park Service, the President, and Congress that there is no environmentally

acceptable alternative.

#### 6. Liquefaction Plant and Marine Terminal

The environmental impacts associated with construction and operation of a liquefaction plant and marine terminal at Port Valdez range from minor to moderate. A safety zone around the facilities would limit access to part of Chugach National Forest lands and certain areas of Anderson Bay presently used for commercial and sport fishing. A major concern affecting the public safety would be the risk of a catastrophic leak or spill of LNG. The city of Valdez is located more than 5 miles from the site on the opposite shore of Port Valdez.

Based upon an LNG safety analysis conducted for the proposed facilities, the site location would provide for safe operations to the public. The results of Yukon Pacific's analysis of the thermal radiation and flammable vapor gas dispersion for an LNG spill indicate that all public and private land-use areas near the proposed liquefaction plant and marine terminal would be located

outside the hazard zones.

LNG tankers traversing Prince William Sound to and from the proposed Anderson Bay marine terminal would be

subject to the U.S. Coast Guard's (USCG) monitoring system which is designed to protect the navigable waters of the area from environmental harm resulting from collisions or groundings. The cumulative increases in tanker traffic through Port Valdez and Valdez Arm would increase the potential for accidents, including oil spills. The USCG indicated that it would be capable of handling the additional tanker traffic which would result from the proposed TAGS project since existing vessel traffic is low.

The cumulative impact of LNG tanker traffic on the high seas between Prince William Sound and destination ports in the Pacific Rim nations is considered negligible.

#### 7. No-Action Alternative

The no-action alternative would consist of the denial of any of the rightsof-way or permits required for construction and operation of the TAGS project or denial of the DOE export authorization or FERC disapproval of the place of export. Under this alternative, no construction would take place, North Slope gas would not be exported, and the impacts to the national environment associated with the project would not occur. The noaction alternative also would avoid the negative and positive impacts to the socioeconomic environment.

The FEIS classified the socieconomic impacts from this alternative as significant. The positive socioeconomic effects of the proposed TAGS project on Alaska include creating and stimulating employment in Alaska, increasing local and state government revenues, and helping to offset trade inbalances with Taiwan, Korea, and Japan. Inside Alaska, construction will create a significant number of jobs, up to 7,200 during the peak year. Operations will employ about 550 people directly, and support 1,000 more jobs indirectly. Royalty payments, state taxes and property taxes will produce about \$377 million in state government annual revenues. Conversely, the influx of construction workers for TAGS would cause short-term negative impacts to water supply and waste, crime, and a strain on the supply of goods and services in local population centers near the pipeline alignment.

# VII. Considerations in Implementing the

The DOE has determined that the noaction alternative is the environmentally preferred alternative, because none of the physical impacts to the natural environment predicted in the FEIS would occur. However, the DOE has

concluded that these impacts are relatively minor and area acceptable when compared to the substantial economic benefits to be derived from the project.

BLM issued a right-of-way to Yukon Pacific for the TAGS pipeline on October 17, 1988. The grant was contingent upon issuance of an LNG authorization by the DOE. BLM determined that of the two construction alternatives analyzed in detail in the FEIS, the proposed TAGS project is the environmentally preferred alternative and the impacts are comparable with those of the TAPS facilities, a project that was approved by both Federal and state governments and has been in operation for more than 10 years.

In its decision to issue the right-ofway. BLM identified three factors discussed in the FEIS which indicated that the proposed TAGS project is environmentally preferable to the Cook Inlet alternative. First, the Cook Inlet alternative creates new disturbance in Minto Flats, an important subsistence use area. By contrast, the impacts of the proposed project are in an existing transportation and utility corridor. Second, the Cook Inlet alternative crosses Denali National Park and Preserve, and would impact visitors traveling to and from the park. While the proposed project would impact visitors and travelers elsewhere, Denali has the greater concentration. Finally, the Cook Inlet alternative includes a 15mile subsea crossing, an impact to an ecosystem that does not occur under the

proposed project.

DOE notes that BLM, USACE, FERC, and the State of Alaska have principal authority and direct responsibility to impose and monitor mitigation measures and conditions relative to the construction and operation of the proposed TAGS facilities through their various authorizations and permits. Yukon Pacific, BLM, and USACE are using a tiered approval system for the design and construction of the TAGS project. The fundamental approach used in the tiered mitigation process is: the development and approval of design criteria, final design, and the issuance of a "Notice to Proceed." Therefore, the discussion of mitigation measures in the FEIS tend to be generic and refer to site specific designs not yet done. Consistent with that tiered concept, BLM attached stipulations to its grant of a right-of-way for TAGS which specify that Yukon Pacific will submit for government approval certain plans and site specific designs before proceeding with field activities. These stipulations and subsequent plans will set forth the

standards of performance for construction and operation of the pipeline, and termination of the right-ofway grant. The stipulations cover (1) protection of the environment; (2) integrity of the pipeline system; (3) integrity and protection of adjacent or intersecting facilities, in particular, the TAPS and ANGTS pipelines; (4) public health and safety; and (5) effects on socioeconomic, subsistence, and cultural resources. Mitigation of environmental impacts and monitoring of the project by BLM will be primarily through monitoring, enforcement, and action under these stipulations. According to BLM, these stipulations adopt all practicable means to avoid or minimize the short- and long-term environmental harm, as well as irreversible and irretrievable commitments of resources.

ANGTA established the Office of Federal Inspector (OFI) to coordinate and monitor Federal activity concerning ANGST. Reorganization Plan No. 1 of 1979 transferred to OFI exclusive responsibility for enforcing all Federal statutes relevant in any manner to the preconstruction, construction, and initial operation of ANGTS. OFI coordinates its activities with those of other Federal agencies. In areas where TAGS and ANGTS would interact, OFI would have responsibility to determine compatability, to review and approve designs, plans, and schedules, and to enforce the provisions and requirements of the TAGS right-of-way when it is on

or adjacent to the ANGTS right-of-way. With respect to Yukon Pacific's LNG export site, the FERC is responsible for considering the environmental and safety ramifications of its approval, under section 3 of the NGA, of the place at which the natural gas would be exported. The FERC was a cooperating agency in the preparation of the FEIS. However, a decision on Yukon Pacific's application for an export site has not yet been issued by the FERC. While it is uncertain which, if any, mitigation measures the FERC would impose for the placement, construction, and operation of the liquefaction plant and marine terminal through its authorization, the liquefaction plant must nevertheless comply with the Pipeline Safety Regulations of the U.S. Department of Transportation (DOT),11 and meet the requirements of the National Fire Association 59A LNG standards.

The regulatory responsibility for the safety of the liquefaction plant falls under the jurisdiction of the U.S. Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the DOE. The USCG is responsible for the siting, design, construction, maintenance, and operation of the marine cargo transfer system and associated facilities (except the site for the associated facilities) between the vessel and last valve located immediately before the storage tanks. The RSPA is responsible for the rest of the plant.12 The Anderson Bay site would have to be developed to meet USCG and RSPA regulations. Accordingly, the Federal safety standards and regulations of the USCG and RSPA would be the primary standards for the siting, design, construction, maintenance, and operation of the TAGS liquefaction plant and marine terminal facilities, in addition to any potential mitigation measures that may be implemented or imposed as conditions to any authorization by the FERC.

#### VIII. Conclusion

The decision whether to authorize this export of LNG has been evaluated against the potential environmental impacts. Implementing the specific mitigation measures identified in the FEIS, together with the stipulations required by BLM, would minimize the negative social, economic, and environmental effects and promote the positive effects of the proposed TAGS project. Accordingly, DOE has decided to grant Yukon Pacific authority to export Alaskan natural gas and determined that this decision is not inconsistent with the public interest under section 3 of the NGA.

Issued in Washington, DC, on November 16, 1989.

#### Michael R. McElwrath,

Acting Assistant Secretary, Fossil Energy.

[FR Doc. 89-28088 Filed 11-29-89; 8:45 am] BILLING CODE 6450-01-M

# Federal Energy Regulatory Commission

[Project Nos. 2683 and 588]

## James River II, WA; Public Scoping Meetings

November 22, 1989.

The Federal Energy Regulatory Commission (FERC) has received an application for an original license for the operation of the Elwha Project, FERC No. 2683 and an application for a new license for the operation of the Glines Canyon Project, FERC No. 588. The two hydropower projects are located on the Elwha River in Clallam County, Washington. The FERC staff has determined that licensing these projects would constitute a major federal action significantly affecting the quality of the human environment. The FERC, on August 17, 1988, noticed an intent to prepare an environmental impact statement (EIS) on the hydroelectric projects in accordance with the National Environmental Policy Act.

## **Scoping Meetings**

On Wednesday December 20, 1989, the staff will conduct a public scoping meeting in Port Angeles, Washington, from 7:30 p.m. to 10:30 p.m., at the Port Angeles High School Auditorium, 304 East Park Avenue. The next day, Thursday, December 21, 1989, in Seattle, Washington, the staff will conduct two scoping meetings the first oriented toward agencies from 1:00 p.m. to 4:30 p.m. and the second oriented toward public interests from 7:30 p.m. to 10:00 p.m. The scoping meetings in Seattle will be held at the Federal Building, South Auditorium, 4th Floor, 915 Second Avenue.

All interested individuals, organizations, tribes, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

#### Objectives

At the scoping meetings the staff will:
(1) Summarize the environmental issues tentatively identified for analysis in the planned EIS, (2) encourage statements from the public and experts on the issues that should be analyzed in the EIS, including points of view in opposition to, or in support of, the staff's preliminary views; and (3) solicit from

<sup>&</sup>lt;sup>11</sup> 49 CFR part 193, subchapter D, prescribes Federal Pipeline Safety Standards for liquefied natural gas facilities.

<sup>12</sup> The USCG derives its authority over waterfront facilities adjoining the navigable waters of the U.S. from the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.) and Executive Order 0173, as amended (3 CFR 1949–1953 comp., p. 356). The regulatory authority of the RSPA is derived from the natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1671 et seq.).

the meeting participants all available information, especially quantified data, on the resources at issue.

The meetings will be recorded by a stenographer and thereby become a part of the formal record of the Commission proceeding on the proposed Elwah/ Clines Canyon Projects. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, tribes, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be

addressed in the EIS.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until January 22, 1990. All correspondence should clearly show the following caption on the first page: Elwha/Glines Canyon Projects, Washington, Project Nos. P-2683 and

A preliminary EIS scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to all interested parties.

All those that are formally recognized by the Commission as intervenors in the Elwha/Glines Canyon Projects proceedings are asked to refrain from engaging the staff or its contractor in discussions of the merits of the projects outside of any announced meetings.

For further information please contact S. Ronald McKitrick at (202) 357-0783.

Lois D. Cashell,

Secretary. [FR Doc. 89-27981 Filed 11-29-89; 8:45 am] BILLING CODE 6717-01-M

#### [Docket Nos. CP90-73-000, st al.]

## Pan American Gas Co., et al.; Natural **Gas Certificate Filings**

Take notice that the following filings have been made with the Commission:

## 1. Pan American Gas Company

[Docket No. CP90-73-000]

November 20, 1989.

Take notice that on October 13, 1989, Pan American Gas Company (Pan Am). 200 East Randolph Drive, Chicago, Illinois 60601, filed in Docket No. CP90-73-000, as supplemented on November 15, 1989, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition of facilities in Oklahoma and Texas to be used to transport gas in interstate commerce, to operate the system as a transporter of natural gas in and between Oklahoma and Texas and to construct and operate a metering and regulating station, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pan Am states that it proposes to acquire the "Oklahoma-Texas Line" from United Gas Pipeline Company (United). It is stated that the facilities included in the acquisition would include 8.07 miles of 20-inch pipeline, one 12-inch and 16-inch orifice meter tube, a regulating station and appurtenances commencing in Beckham County, Oklahoma and terminating in Wheeler County, Texas. It is stated that United constructed the Oklahoma-Texas Line in 1982 to comply with a gas purchase contract and transportation agreement pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA), to connect Oklahoma Natural Gas Company to facilities owned by Red River Pipeline Company (Red River). It is stated that both contracts terminated in 1986. It is stated that subsequent thereto, United has utilized the line solely for interruptible Section 311 shipments.

Pan Am states that it is acquiring the Oklahoma-Texas Line from United and that Pan Am's ownership of the line is contingent upon the issuance of an order approving an application for abandonment filed by United in Docket No. CP89-1547-000. Pan Am further states that at that time a Special Warranty Deed and Bill of sale will be prepared. Pan Am states that it will acquire the Oklahoma-Texas Line at a

cost of \$3,000,000.

It is stated that Pan Am proposes to operate as a transporter of natural gas in Oklahoma and Texas. It is also stated that Pan Am proposes tariffs for firm and interruptible transportation on the Oklahoma-Texas Line and initial maximum and minimum firm and interruptible rates for such

transportation.

Pan Am states that since it is acquiring the Oklahoma-Texas Line from United, it proposes to utilize United's existing gas plant in service for this line. However, it is stated that because Pan Am is acquiring the line for purposes of operating the facilities as a stand alone, point-to-point transmission, it will be necessary to construct a metering station at the point at which its line interconnects with the facilities of Red River in Texas. Pan Am estimates the cost of installing the measuring and

regulating station to be \$450,000, which will be capable of handling maximum daily gas flows of 150,000 Mcf. Pan Am states that the meter station will be financed by internally generated funds.

Comment date: December 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

#### 2. Texas Eastern Transmission Corporation

[Docket No. CP90-186-000] November 20, 1989

Take notice that on October 31, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP90-186-000 and application pursuant to section 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity, authorizing the implementation of a replacement storage service under a new Rate Schedule SS-1 and a sales service under a new Rate Schedule SCQ, and for an order permitting and approving the abandonment of service under Rate Schedule WS, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern states that by Commission order issued September 1, 1960 in Docket Nos. G-18968 and G-18969 (24 FPC 364), as subsequently amended by Commission orders, Texas Eastern is currently authorized to provide a storage service under its Rate Schedule WS (Winter Service) to 25 customers for up to a total Maximum Daily Quantity (MDQ) aggregating 597,358 Dekatherms (Dt) based upon dedicated storage capacity in the Accident, Leidy, and Oakford Storage Fields. Texas Eastern also states that the primary terms of 21 of the WS service agreements have expired and the remainder will expire shortly.

Texas Eastern further states that due to changes in the regulatory and business climate under which Texas Eastern must operate, that changes in the nature of the WS service are necessary. To this end on November 15, 1988, Texas Eastern sent letters of termination to all its WS customers, and indicated to the WS customers a desire to negotiate new service contracts to replace the terminated WS contracts.

Texas Eastern states further that by the Stipulation and Agreement filed May 31, 1989 in Docket No. RP88-67, et al., the issues of (i) whether the current cost allocation and rate design of Texas Eastern's service under Rate Schedule WS is unjust, unreasonable, unduly preferential and, if so, whether and in what manner the cost allocation and

rate design of the WS service and Texas Eastern's other services should be modified, and (ii) the effect of any changes in rates for WS service upon the rates charged pursuant to Texas Eastern's other sales and transportation rate schedules, will be treated as a contingent reserved issue in order to allow the WS customers and Texas Eastern to negotiate new service agreements to replace the WS service; that the Stipulation and Agreement also

provided that the litigation of the appropriateness of the rates for the existing WS service will be held in abeyance until November 1, 1989, in order to permit Texas Eastern and its customers to submit a restructuring plan for the WS service, otherwise, the issues would be set for hearing; that it was against this backdrop that Texas Eastern proposed and negotiated with its customers on the terms and conditions of new services to replace

Rate Scheduled WS; and that accordingly, Texas Eastern is submitting the instant application for the restructured service.

Texas Eastern requests a certificate of public convenience and necessity authorizing the implementation of storage service under a new Rate Schedule SS-1 and sales service under a new Rate Schedule SCQ, up to the following quantities (Dt):

			SS-1		
Customer	Maximum daily withdrawal quantity	Maximum storage quantity	Non-SCQ storage quantity <sup>1</sup>	Non-SCQ daily injection quantity <sup>2</sup>	SCQ— Summer contract quantity
Control of the Contro	(1)	(2)	(3)	(4)	(5)
Zone B: Quantities to be Nominated by Buyer		1	C3 (3)	1 10 500	
Arkansas/Louisiana Gas		37,350			
Associated Natural Gas	16,665	999,900			
City of Cairo, IL	312	18,720			
Central Illinois Public Service Co	5,709	342,540			
Consumers Gas Co	125	7,470			
City of Kennett, MO	2.021	121,230			
City of Lawrenceburg, TN	415	24,930			
City of Lebanon, TN		24,930	-CANDESCANO 2000 3 (90)	000000000000000000000000000000000000000	Section of the section of the
Mississippi Valley Gas Co	7,711	462,690	Separate de la constitución de l		STATE OF THE PARTY
Union Electric Co	1,557	93,420			
United Cities Gas Co	386	23,130	CONTROL TRANSPORTER TO THE PARTY		Section of the Party of the Par
Cone C:		20,100			
Indiana Gas Co	3,563	213,750			The second
City of Somerset, KY		12,420			
one D:		12,420	***************************************		
Algonquin Gas	185,586	11,135,160			
Brooklyn Union Gas Co	62,286	3,737,160			
Chambersburg, PA	2,700	162,000			
Columbia Gas Trans	11,713				
Consolidated Edison Co. of NY	11,/13	702,720		***************************************	
Elizabethton Co. Co.	64,362	3,861,720			
Elizabethtown Gas Co	872	52,290			
Long Island Lighting	15,572	934,290			
New Jersey Natural Gas	59,171	3,550,230			
Penn Fuel Gas	5,382	322,920			
Philadelphia Electric	43,601	2,616,030			
Philadelphia Gas Works	44,118	2,647,080			-
Public Service Electric & Gas Co	62,286	3,737, 160			*******************************
Total	597,358	35.841,240			

This nomination may not exceed 110% of 1/214th of non-SCQ storage quantity (Col. 3).

Buyer may nominate up to the maximum storage quantity (Col. 2).

Texas Eastern states that the above customers have been tendered precedent agreements by Texas Eastern to purchase the SS-1 storage service and, if desired by the customers, the SCQ sales service. Texas Eastern further states that it will supplement this application when the precedent agreements are executed:

Texas Eastern states that for service rendered by Texas Eastern to each Buyer pursuant to Rate Schedule SS-1, Buyer shall pay each month the sum of the following charges:

A. MDWQ Charge: The Demand Charge rate multiplied by the Maximum Daily Withdrawal Quantity (MDWQ).

B. Space Charge: The Space Charge rate multiplied by one-twelfth (1/12) of the Maximum Storage Quantity (MSQ).

C. Injection Charge: The Injection Charge rate multiplied by the quantity of gas injected pursuant to Rate Schedule SS-1 for the month.

D. Withdrawal Charge: The applicable Withdrawal Charge rate multiplied by the quantity of gas withdrawn from storage, other than Authorized Overrun Quantities, pursuant to Rate Schedule SS-1 for the month.

E. AOQ Charge: The applicable authorized overrun charge rate multiplied by the quantity of Authorized Overrun Quantity delivered to Buyer for the month.

F. Commodity Sales Charge: The applicable commodity charge rate multiplied by the quantity of gas purchased by Buyer from Texas Eastern

and delivered to Texas Eastern for the month.

Texas Eastern states that for all service provided to Buyer during the Summer Season under Rate Schedule SCQ, Buyer shall pay Texas Eastern each month during the year the sum of the Demand Charges and Commodity Charges as follows:

Capacity Reservation Charge: The Capacity Reservation rate multiplied by one-twelfth (1/12) of Summer Contract Quantity.

Commodity Charge: The applicable Commodity Charge rate multiplied by the quantity of gas purchased during the month by Buyer for subsequent injection into storage under Rate Schedule SS-1.

Texas Eastern states that no new facilities will be required inasmuch as Texas Eastern will utilize the facilities it has been utilizing to render the service under Rate Schedule WS that it proposes to abandon herein.

Texas Eastern requests permission and approval to abandon service under its Rate Schedule WS as follows:

Customer	WS service aban- doned (MDO/ DT)
Zone B:	115
Arkansas/Louisiana Gas	623
Associated Natural Gas Co	16,665
City of Cairo, IL	312
Central Illinois Public Service Co	5,709
Consumers Gas Co	125
City of Kennett, MO	2.021
City of Lawrenceburg, TN	415
City of Lebanon, TN	415
Mississippi Valley Gas Co	7,711
Union Electric Co	1,557
United Cities Gas Co	386
Zone C:	
Indiana Gas Co	3,563
City of Somerset, KY	207
Zone D:	
Algonquin Gas Trans	185,586
Brooklyn Union Gas Co	62,286
Chambersburg, PA	2,700
Columbia Gas Trans	11,713
Consolidated Edison Co. of NY	64,362
Elizabethtown Gas Co	872
Long Island Lighting Co	15,572
New Jersey Natural Gas	59,171
Penn Fuel Gas	5,382
Philadelphia Electric	43,601
Philadelphia Gas Works	44,118
Public Service Electric & Gas	62,286
Total	597,358

Texas Eastern alleges that authorization of Texas Eastern's proposal herein will enable Texas Eastern to restructure the WS service to meet the changes that are taking place in the marketplace and the regulatory climate under which Texas Eastern must operate, that customers should be able to purchase gas at off-peak prices and store such gas for delivery during the peak winter period, thereby reducing costs to the consumers, and that in addition, the customers' ability under Rate Schedule SS-1 to tender "third party" gas supplies will enhance the customers' ability to diversify its supply sources for storage injection.

Comment date: December 11, 1989 in accordance with Standard Paragraph F at the end of the notice.

## 3. Williams Natural Gas Company

[Docket No. CP90-236-000] November 20, 1989.

Take notice that on November 13, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-236-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Midstates Pipeline Company (Midstates), a marketer of natural gas, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to transport, on a firm basis, up to 5,400 dt equivalent of natural gas on a peak day, 5,000 dt equivalent on an average day and 600,000 dt equivalent on an annual basis for Midstates. It is stated that WNG would receive the gas for Midstate's account at various receipt points on WNG's system in Oklahoma, and would deliver equivalent volumes at various points on WNG's system in Kansas. It is asserted that the transportation service would use existing facilities and would not require the construction of additional facilities. It is explained that the transportation service commenced October 1, 1989, under the selfimplementing authorization provisions of \$ 284.223 of the Commission's Regulations, as reported in Docket No. ST90-341.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

## 4. Tennessee Gas Pipeline Company

[Docket No. CP90-238-000] November 20, 1989.

Take notice that on November 13, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252 filed an application with the Commission in Docket No. CP90–238–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to partially abandon a firm transportation service performed by Tennessee, inter alia, for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is open to public inspection.

Tennessee states that the Commission order on remand amending prior order issued September 25, 1987, in Docket No. CP84–132–005 et al. (41 FERC §61,307) authorized Tennessee, inter alia, to provide a firm transportation service of up to 32,500 Mcf of natural gas per day through the Project South Pass Block 77 facilities, offshore Louisiana, to Plaquemines Parish, Louisiana, for Natural. Tennessee, with Natural's consent, now proposes to reduce its firm transportation service volumes to 21,000

Mcf per day, because Natural needs less gas. Tennessee transports this gas for Natural under its FERC Rate Schedule T-175.

Comment date: December 11, 1989, in accordance with Standard Paragraph F at the end of this notice.

## 5. Williams Natural Gas Company

[Docket No. CP90-240-000] November 20, 1989.

Take notice that on November 14, 1989, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Okiahoma 74101, filed in Docket No. CP90-240-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Phillips 66 Natural Gas Company (Phillips), a producer, under WNG's blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with Commission and open to public inspection.

WNG proposes to transport, on a firm basis, up to 200 dt of natural gas equivalent per day for Phillips pursuant to a transportation agreement dated October 4, 1989, between WNG and Phillips. WNG would receive the gas at various existing receipt points on its system in Oklahoma and deliver equivalent volumes, less fuel used and lost and unaccounted for quantities, to various existing delivery points on its system in Kansas and Missouri.

WNG states that the estimated daily and annual quantities would be 200 dt and 73,000 dt, respectively. Service under § 284.223(a) commenced on October 4, 1989, as reported in Docket No. ST90-340-000, it is stated.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

## El Paso Natural Gas Company

[Docket No. CP90-241-000] November 20, 1989

Take notice that on November 15, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-241-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88-433-000 pursuant to Section 7 of the Natural Gas Act, all as

more fully set forth in the request which

is on file with the Commission and open

to public inspection.

El Paso proposes to transport natural gas on an interruptible basis for Devon Energy Corporation (Devon). El Paso explains that the service commenced September 23, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST90-294-000. El Paso proposes to transport on a peak day up to 870 MMBtu; on an average day up to 870 MMBtu; and on an annual basis up to 317,550 MMBtu. El Paso proposes to receive the subject gas at a point of receipt on its system in Beaver County, Oklahoma, and redeliver the gas at a delivery point also in Beaver County, Oklahoma.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

## **Texas Gas Transmission Corporation**

[Docket No. CP90-245-000] November 20, 1989.

Take notice that on November 15. 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-245-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Columbia Gas Development Corporation (Columbia Development) under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that pursuant to a transportation agreement dated April 11, 1989, it proposes to receive up to 75 billion Btu of natural gas per day at specified points located offshore and onshore Texas and Louisiana and in Indiana, Ohio, Kentucky, Illinois, and Arkansas and redeliver the gas at specified points located in Warren County, Ohio. Texas Gas estimates that the peak day, average day and annual volumes would be 75,000 million Btu, 1,000 million Btu, and 365,000 million Btu, respectively. It is indicated that on September 27, 1989, Texas Gas initiated a 120-day transportation service for Columbia Development under § 284.223(a), as reported in Docket No. ST90-97-000.

Texas Gas further states that no facilities need be constructed to implement the service. Texas Gas states that the service would continue on a month-to-month basis unless terminated upon thirty days written notice by either

party. Texas Gas proposes to charge rates and abide by the terms and conditions of its Rate Schedule IT.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 8. Panhandle Eastern Pipe Line Company

[Docket No. CP90-246-000]

November 20, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-246-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Tarpon Gas Marketing Ltd. (Tarpon), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Panhandle requests authorization to transport, on a interruptible basis, up to a maximum of 100,000 dt equivalent of natural gas per day for Tarpon pursuant to a transportation agreement dated March 23, 1989. Panhandle states that it would receive the gas from various existing points of receipt in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma, Texas and Wyoming and redeliver the gas, less fuel and unaccounted for line loss, to Union Gas Limited in Wayne County, Michigan. Panhandle indicates that the total volume of gas to be transported for Tarpon on a peak day would be 100,000 dt; on an average day would be 75,000 dt; and on an annual basis would be 27,375,000 dt.

Panhandle states that it commenced the transportation of natural gas for Tarpon on October 1, 1989, at Docket No. ST90–252–000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 9. Panhandle Eastern Pipe Line Company

[Docket No. CP90-250-000] November 20, 1989

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–250–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of PSI, Inc. (PSI), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86–585–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 10,000 dekatherms of natural gas per day for PSI from receipt points located in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma and Texas to a delivery point located in Cass County, Missouri. Panhandle anticipates transporting an annual volume of 3,650,000 dekatherms.

Panhandle states that the transportation of natural gas for PSI commenced October 1, 1989, as reported in Docket No. ST90–186–000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Panhandle in Docket No. CP86–585–000.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 10. Panhandle Eastern Pipe Line Company

[Docket No. CP90-251-000]

November 20, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-251-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Anadarko Trading Company (Anadarko), a marketer of natrual gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport on an interruptible basis up to 80,000 dt equivalent of natural gas on a peak day, 80,000 dt equivalent on an average day and 29,200,000 dt equivalent on an annual basis for Anadarko. Panhandle states that it would perform the transportation service for Anadarko under Panhandle's Rate Schedule PT. Panhandle indicates that it would receive the gas at designated points on

its system in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma and Texas and would deliver equivalent volumes of gas, less fuel used and unaccounted for line loss, to Anadarko at an interconnection between Panhandle's facilities and those of Mich-Con Detroit, located in Wayne County, Michigan.

It is explained that the service commenced October 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90–189. Panhandle indictes that no new facilities would be necessary to provide the subject service.

Comment date: January 4, 1990, in accordance with Standard Paragraph G

at the end of this notice.

#### 11. Northwest Pipeline Corporation

[Docket No. CP90-252-000]

November 20, 1989.

Take notice that on November 15, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP90-252-000, a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a firm transportation service for Kern River Gas Supply Corporation (KRGS), a marketer of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that it proposes to transport up to 190,000 MMBtu per day of natual gas for KRGS pursuant to a Transportation Agreement dated October 1, 1989, under Rate Schedule TF-1, for an initial term effective from October 1, 1989, to December 31, 1992, and continuing from year to year hereafter, subject to termination upon 12 months written notice by either party.

Northwest proposes to transport the subject gas through its system from Sumas, Washington to a primary delivery point to be located at an interconnection near Muddy Creek, Wyoming with a pipeline proposed to be constructed by Kern River Gas Transmission Company. Pending completion of facilities to allow deliveries at the primary delivery point, Northwest will make deliveries to existing alternate delivery points located between Sumas and Muddy Creek to the extent that capacity is available at such alternate points which is not committed to other firm services.

Northwest further states that the maximum daily transportation volumes

would be no more than 190,000 MMBtu, while it initially estimates that average day and annual transportation volumes initially will be approximately 50,000 MMBtu and 18,250,000 MMBtu, respectively.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

### 12. ANR Pipeline Company

[Docket No. CP90-254-000]

November 20, 1989.

Take notice that on November 16, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90-254-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Wintershall Energy/BASF Corporation (Wintershall), a shipper, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public

inspection. ANR states that the transportation service would be provided pursuant to a transportation agreement wherein ANR proposes to transport up to 20,000 dekatherms (dt) per day equivalent of natural gas, on an interruptible basis, for Wintershall. ANR further states that it would receive the natural gas at ANR's existing points of receipt located in the offshore Louisiana gathering area and would redeliver the natural gas for the account of Wintershall at existing interconnections located in the state of Louisiana. ANR indicates that the average day and annual volumes of natural gas to be transported would be 20,000 dt and 7,300,000 dt, respectively.

ANR states that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on September 12, 1989, as reported in Docket No. ST90-128-000.

Comment date: January 4, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 13. Transcontinental Gas Pipe Line

[Docket No. COP90-132-000] November 21, 1989.

Take notice that on October 25, 1989, Transcontinental Gas Pipe Line Corporation (Applicant) filed an application, as supplemented on October 30, 1989, pursuant to section 7(b) and (c) of the Natural Gas Act and the Rules and Regulations of the

Commission, for an order permitting and approving the abandonment of natural

gas service provided by Applicant under Rate Schedule CD, GSS, WSS, FT and IFS to Commonwealth Gas Pipeline Corporation (commonwealth) which has assigned such service rights to the City of Richmond (Richmond), Columbia Gas Transmission Corporation (Columbia), Commonwealth Gas Services, Inc. (CGS) and Virginia Natural Gas, Inc. (VNG) (referred to collectively as Assignees) and to provide sales, transportation and storage services to Assigness, all as more fully described in the application which is on file with the Commission and open to public inspection.

Applicant states that it presently provides service to Commonwealth pursuant to existing and expired service agreements under the following rate schedules at the indicated levels of

service:

Rate schedule	Quantity
CD WSS GSS	64,500 Mcf per day. 700,000 Dt equivalent storage capacity 100,000 Mcf storage capacity, 2,000 Mcf day demand.

It is indicated that moreover, as a result of the stipulation and agreement which was filed by Applicant on August 27, 1989, in *Transcontinental Gas Pipe Line Corporation*, Docket No. RP88–63000, et al. and approved by the Commission on September 29, 1989, Applicant also provides service to commonwealth under the following Rate Schedules:

Rate Schedule	Quantity	
FT IFS	64,500 Mcf per day 64,500 Mcf per day	de La

Applicant states that in connection with the restructuring of the Commonwealth system, Assignees have negotiated arrangements with Commonwealth and Applicant which provide for their assumption of the rights and obligations of Commonwealth with respect to service from Applicant. It is stated that in this connection, by assignment dated October 19, 1989, Commonwealth has assigned all of its rights and obligations under its existing agreements with Applicant to Richmond, Columbia, CGS and VNG. Applicant also states that in addition, pursuant to the assignment. Applicant has agreed and consented tgo the transfer by Commonwealth of its rights and obligations to the Assignees. In order to effectuate the assignment,

Applicant requests authorization to abandon natural gas services provided to Commonwealth under Rate Schedules CD, GSS, WSS, FT and IFS and in lieu thereof, to provide such service to the assignees.

Transco also indicates that in lieu of the service provided to Commonwealth and subject to the terms and conditions of the Assignment and the service agreements between Applicant and Commonwealth, Applicant proposes to provide sales, storage and transportation services to Assignees under the following Rate Schedules at the idnicated service levels:

Assignee	Quantity (Mcf/d)	
Rat	e Schedules CD, FT and IFS	
Richmond	9,693.	
CGS	6,377.	
Columbia		
VNG	. 34,715.	
	Rate Schedules GSS	
VNG	100,000 Mcf storage capacity. 2,000 Mcf daily demand.	
	Rate Schedules WSS	
VNG	. 700,000 Dt equivalent of storage ca- pacity.	

Applicant indicates that under the terms of the proposed agreement, the Assignees will assume all of Commonwealth's rights and obligations under the service agreements with Applicant, as modified by the settlement approved by the Commission in Docket No. RP88–68, et al. In addition, pursuant to the assignment, Applicant states that the parties have acknowledged and agreed that the assignment will confer upon assignees no greater right or interest in service than what Commonwealth is presently entitled.

Applicant indicated that assignees would be considered "settling customers" and are entitled to the interim merchant service elected by Commonwealth effective November 1, 1989. It is also indicated that in addition, under Article II the Assignees, as settling customers are entitled to certain long term and limited term conversion rights under the settlement and that those rights would accure to Assignees on a proportionate basis relative to their respective contract demand (CD) entitlements under the terms of the assignments.

Transco also states that as part of the settlement, settling customers also have agreed to a minimum or guraranteed annual PSP Commodity Surcharge computed in one of two ways, at the election of the settling customers, and

that Commonwealth has elected Option I for the applicable PSP Commodity Charge methodology. Accordingly, it is indicated that Commonweatth's Option I election and Commonweatth's fixed monthly PSP charge would be binding on Assignees on a proprtionate basis relative to their respective CD entitlements.

Comment date: December 12, 1989, in accordance with Standard Paragraph F at the end of this notice.

#### 14. United Gas Pipe Line Company

[Docket No. CP90-228-000]

November 21, 1989. Take notice that on November 9, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-228-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for permission and approval to abandon direct sales service and the metering facilities used for the sale of natural gas to two industrial customers in East Baton Rouge Parish. Louisiana, under United's blanket certificate issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to abandon the sales to the two customers, Kleinpeter Farms Dairy, Inc. and Kleinpeter Farms Dehydration Company, in response to notification by both customers that they wish to terminate their sales contracts. It is stated that the abandonment of the facilities would be accomplished without detriment or disadvantage to United's other existing customers. It is asserted that the original cost of the facilities, \$21,287, would be credited against Account 101, Gas Plant in Service.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 15. Endevco Industrial Gas Sales Company

[Docket No. CP90-237-000]

November 21, 1989.

Take notice that on November 13, 1989, Endevco Industrial Gas Sales Company (Endevco), 8080 North Central Expressway, 12th Floor, Dallas, Texas 75206, filed an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations (18 CFR § 284.244) requesting blanket certificate authorization to engage in the sale, transportation (including storage) and assignment of natural gas, all as more

fully set forth in the application which is on file with the Commission and open to public inspection.

Endevco states that it is a public utility in the State of Mississippi providing natural gas services subject to the regulation of the Mississippi Public Service Commission (Mississippi PSC). Endevoc further states that it is a "Hinshaw Pipeline" and is exempt from the Commission's jurisdiction under section 1(c) of the Natural Gas Act. During the twelve-month period beginning on November 1, 1988, and ending October 31, 1989, Endevco asserts that it received 84, 472 MMBtu's of gas into its system and that all such volumes were from interstate sources and exempt from the Commission's jurisdiction under section 1(c) of the Natural Gas Act.

Endevco advises that it has received authority from the Mississippi PSC to acquire an existing natural gas liquid storage facility located in Mississippi, which is presently subject to Mississippi regulation, and to convert such a facility into, and operate such facility as a natural gas storage facility. The instant authorization is being sought primarily because Endevco desires to utilize the facility to provide storage service for companies located outside of Mississippi. Endevco states that the services performed under the requested blanket authority would be subject to the same rates, terms and conditions approved by the Mississippi PSC for like services provided to LDC's, end-users and public utilities located within Mississippi.

Comment date: December 12, 1989 in accordance with Standard Paragraph F at the end of the notice.

### 16. Texas Gas Transmission Corporation

[Docket No. CP90-243-000] November 21, 1989.

Take notice that on November 15. 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90-243-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Santa Fe Minerals, Inc. (Santa Fe), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated August 21, 1989, Texas Gas requests authorization to transport up to 75,000 MMBtu of natural gas per day for Santa Fe under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at various existing points of receipt along its system and deliver the gas to various existing points of delivery located in Louisiana. Santa Fe estimates that the average day and annual transportation quantities would be 50,000 MMBtu and 27,000,000 MMBtu, respectively. Texas Gas advises that the service commenced October 14, 1989, as reported in Docket No. ST90-169-000, under § 284.223(a) of the Commission's Regulations.

Comment date: January 5, 1990, in accordance with Standard Paragraph G

at the end of this notice.

#### 17. K N Energy, Inc.

[Docket No. CP90-253-000] November 21, 1989.

Take notice that on November 15, 1989, K N Energy, Inc. (KN), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP90-253-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to construct and operate sales taps for the delivery of natural gas to end users under KN's blanket certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

KN proposes the construction and operation of sales taps to various end users located along its jurisdictional pipelines. KN states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on KN's peak day and annual

deliveries.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

## 18. Tennessee Gas Pipeline Company

[Docket No. CP90-258-000]

November 21, 1989.

Take notice that on November 17, 1939, Tennessee Gas Pipeline Company, (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90-256-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Pruet Production Company (Pruet), under its blanket authorization issued in Docket No. CP87-115-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the

Commission and open to public inspection.

Tennessee would perform the proposed interruptible transportation service for Pruet, a producer of natural gas, pursuant to a gas transportation agreement dated October 20, 1989 (contract no. I-3887). The term of the transportation agreement is from the date of execution and shall remain in full force and effect for a term of one year and month to month thereafter, subject to termination upon 30 days prior written notice to the other party. Tennessee proposes to transport on a peak day up to 74,180 dekatherm; on an average day up to 74,180 dekatherm; and on an annual basis 27,075,700 dekatherm for Pruet. Tennessee proposes to transport the subject gas from receipt points located in Mississippi and Alabama, for redelivery to various delivery points located in Alabama. Tennessee avers that no new facilities are required to provide the proposed

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Tennessee commenced such self-implementing service on November 4, 1989, as reported in Docket No. ST90-471-000.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 19. Trunkline Gas Company

[Docket No. CP90-261-000] November 21, 1989.

Take notice that on November 17, 1989. Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-261-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for NGC Transportation, Inc. (NGC), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated March 30, 1989, under its Rate Schedule PT, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for NGC. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from

the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Texas Eastern in Williamson County, Illinois.

Trunkline advises that service under § 284.223(a) commenced September 28, 1989, as reported in Docket No. ST90–190. Trunkline further advises that it would transport 2,000 dt on an average day and 730,000 dt annually.

Comment date: January 5, 1990, in accordance with Standard Paragraph G

at the end of this notice.

## 20. Colorado Interstate Gas Company

[Docket No. CP90-267-000]

November 21, 1989.

Take notice that on November 17, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944 filed in Docket No. CP90-267-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Questar Energy Company (Questar), a natural gas marketer, under its blanket authorization issued in Docket No. CP86-589-000, et al., pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG would perform the proposed interruptible transportation service for Questar, pursuant to a interruptible transportation service agreement dated July 15, 1989. The transportation agreement dated July 15, 1989. The transportation agreement is effective until August 1, 1990, and month to month thereafter provided that after July 31, 1990, either party may terminate the agreement upon 30 days' prior written notice. CIG proposes to transport up to 25,000 Mcf of natural gas on a peak and day; 10,000 Mcf on an average day; and on an annual basis 3,650,000 Mcf of natural gas for Questar. CIG proposes to receive the subject gas at an existing point of receipt located in Section 24-T18N-R106W, Sweetwater County, Wyoming and redeliver the gas, less fuel gas and lost and unaccounted-for gas, and redeliver the gas, for the account of Questar in Section 23-T12N-R60W, Weld County, Colorado. CIG avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision § 284.223(a)(1) of the Commission's Regulations. CIG commenced such self-implementing service on October 18, 1989, as reported in Docket No. ST90–365–000.

Comment date: January 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 21. Trunkline Gas Company

[Docket No. CP90-258-000]

November 21, 1989.

Take notice that on November 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-258-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Panhandle Trading Company (PTC), a marketer, under the blanket certificate issued in Docket No. CP86-586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated December 22, 1988, under its Rate Schedule PT, it proposes to transport up to 65,000 dekatherms (dt) per day equivalent of natural gas for NGC Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Texas Eastern in Williamson County, Illinois.

Trunkline advises that service under § 284.223(a) commenced October 3, 1989, as reported in Docket No. ST90–324.

Trunkline further advises that it would transport 20,000 dt on an average day and 7,300,000 dt annually.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

## 22. Trunkline Gas Company

[Docket No. CP90-257-000]

November 22, 1989.

Take notice that on November 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP90–258–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Mountain Iron & Supply

Company (Mountain Iron), a marketer, under the blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated September 15, 1989, under its Rate Schedule PT, it proposes to transport up to 1,000 dekatherms (dt) per day equivalent of natural gas for Mountain Iron. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to CIPSO-Effingham in Effingham County Illinois.

Trunkline advises that service under § 284.223(a) commenced October 1, 1989, as reported in Docket No. ST90–323. Trunkline further advises that it would transport 1,000 dt on an average day and 365,000 dt annually.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 23. Trunkline Gas Company

[Docket No. CP0-260-000] November 22, 1989.

Take notice that on November 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP90-260-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Seagull Marketing Services, Inc. (Seagull Marketing), a marketer, under the blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement dated April 27. 1989, under its Rate Schedule PT, it proposes to transport up to 40,000 dekatherms (dt) per day equivalent of natural gas for Seagull Marketing. Trunkline states that it would transport the gas from receipt points in the states of Illinois, Louisiana, Tennessee, and Texas, from the Panhandle receipt at Douglas County, Illinois, and from the areas of offshore Louisiana and offshore Texas, as shown in Exhibit "A" of the

transportation agreement and would deliver the gas, less fuel and unaccounted for line loss, to Consumers Power in Elkhart County, Indiana.

Trunkline advises that service under \$ 284.223(a) commenced October 13, 1989, as reported in Docket No. ST90–402. Trunkline further advises that it would transport 40,000 dt on an average day and 10,000,000 dt annually.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

# 24. Gulf States Transmission Corporation

[Docket No. CP90-239-000]

November 22, 1989.

Take notice that on November 13, 1989, Gulf States Transmission Corporation (GSTC) 1324 North Hearne, Suite 300, Shreveport, Louisiana, 71107, filed an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, Part 157, Subpart E of the Commission's Regulations (18 CFR Part 157, Subpart E), and Part 284 of the Regulations (18 CFR Part 284). GSTC requests an abbreviated application for: (1) An optional expedited certificate (OEC) of public convenience and necessity authorizing the construction and operation of certain pipeline facilities and approving initial rates to be charged for transportation service through such facilities; and (2) issuance of a blanket certificate of public convenience and necessity to perform self-implementing, open-access transportation service by means by such facilities, and to perform "routine activities," all as more fully set forth in the request which is on file with the Commission and open to public inspection.

GSTC proposes to construct a natural gas transmission system extending from a point in Harrison County, Texas, to a point in Caddo Parish, Louisiana. Specifically, GSTC requests that the Commission grant it an optional expedited certificate authorizing it to construct an operate the proposed facilities which will enable and existing gas reserves located primarily in east Texas to be transported to intrastate facilities located in northwest Louisiana, for delivery to local markets, as well as to downstream interstate pipelines. GSTC proposes to construct and operate the following interstate facilities:

—Approximately 5.6 miles of 20 inch O.D. pipeline, primarily .312" wall thickness, from Section 20 T-18-N, R-16-W, Caddo Parish, Louisiana, to N. Jones Survey, A-371, Harrison County, Texas; and —Meter stations and receipt and delivery points at each terminus of the aforementioned pipeline.

GSTC states that the maximum throughput of the proposed facilities will be 150,000 Mcf per day at the design inlet operating pressure of 912 psig. This pressure is necessary for GSTC to deliver gas at its terminus in Caddo Parish, Louisiana at the 900 psig operating pressure of Gulf States Pipeline Corporation. GSTC states that no compression will be installed. GSTC estimates that the capital cost of the proposed facilities will be \$2,455.000. GSTC proposes to finance the project through short-term loans and corporate funds on hand, and permanently as part of its over-all long-term financing program.

GSTC submits that the initial rates proposed to be charged for the transportation service have been derived using components that comply with the Commission's standards for assumption of economic risk by OEC applicants. Therefore, GSTC states that it will be assuming the economic risk of

the project.

Finally, GSTC requests that the Commission issued a blanket certificate of public convenience and necessity authorizing it to transport natural gas for others pursuant to § 7 of the NGA and § 284.221 of the Commission's Regulations. In support of this request, GSTC appended to its application pro forma tariff sheets, general terms and conditions, and service agreements to implement such open access, nondiscriminatory transportation to be performed on a self-implementing basis under the blanket certificate. GSTC also requests that the blanket certificate authorize it to undertake the "routine activities" under subpart F of Part 157 of the Commission's Regulations.

Comment date: December 13, 1989 in accordance with Standard Paragraph F

at the end of the notice.

## 25. United Gas Pipe Line Company

[Docket No. CP90-265-000]

November 22, 1989.

Take notice that on November 17, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-265-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide an interruptible transportation service for Gulf South Pipeline Company (Gulf South) under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7(c) of the Natural

Gas Act, as more fully set forth in the request which is on file with the Commission and open to the public inspection.

United States that pursuant to a transportation service agreement dated May 12, 1989, as amended on September 14, 1989, it proposes to receive up to 300,000 Mcf per day at specified points located onshore and offshore Louisiana, Texas, and Mississippi and redeliver the gas at specified points located in the states of Louisiana, Alabama, and Missississippi. United estimates that the peak day, average day and annual volumes would be 309,000 million Btu, 309,000 million Btu, and 112,785,000 million Btu, respectively. It is indicated that on September 15, 1989, United initiated a 120-day transportation service for Gulf South under § 284.223(a), as reported in Docket No. ST90-339-000.

United further states that no facilities need by constructed to implement the service. United states that the agreement would continue on a month-to-month basis until terminated. United proposes to charge rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 26. Panhandle Eastern Pipe Line Company

[Docket No. CP90-248-000] November 22, 1989.

Take notice that on November 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1842, filed in Docket No. CP90-248-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide transportation service for Home Petroleum Corporation (HPC), a shipper and producer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 2,000 dt per day on an interruptible basis, pursuant to a transportation agreement dated September 14, 1989, between Panhandle and HPC. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt located in the State of Wyoming. Panhandle states that it would then redeliver subject gas, less fuel used and unaccounted for line loss,

to Mountain Fuel in Sweetwater County, Wyoming. Panhandle indicates that the total volume of gas to be transported for HPC on a peak day would be 2,000 dt; on an average day would be 1,500 dt; and on an annual basis would be 730,000 dt

Panhandle states that it commenced the transportation of natural gas for HPC on October 1, 1989, at Docket No. ST90-317-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. Panhandle indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

# 27. El Paso Natural Gas Company

[Docket No. CP90-255-000] November 22, 1989.

Take notice that on November 17, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP90-255-000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas for Phillips Gas Marketing Co. (Phillips), a natural gas shipper, under its blanket certificate issued in Docket No. CP88-433-000, all as more fully set forth in the request which is open for public inspection.

El Paso proposes an interruptible transportation service for Phillips of 51,500 MMBtu equivalent of natural gas on peak and average days, and 18,797,500 MMBtu equivalent per year. El Paso would transport gas for Phillips from any receipt point on its system to various existing Texas delivery points and existing delivery points near Topock, Arizona, and Blythe, California, also on El Paso's system. El Paso commenced its transportation service for Phillips on September 26, 1989, under the 120-day automatic authorization provisions of § 284.233(a) of the Regulations, as reported in Docket No. ST90-356.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

## 28. Colorado Interstate Gas Company

[Docket No. CP90-242-000]

November 22, 1989.

Take notice that on November 15, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP90-242-000 a request pursuant to § 284.223 of the Commission's
Regulations under the Natural Gas Act
for authorization to provide an
interruptible transportation service for
Amoco Production Company (Amoco), a
producer of natural gas, under its
blanket certificate issued in Docket No.
CP86–589, et al. pursuant to section 7(c)
of the Natural Gas Act, all as more fully
set forth in the request on file with the
Commission and open to public
inspection.

CIG states that it would receive natural gas for Amoco from various existing points of receipt on CIG's system in Kansas, Wyoming, Oklahoma and Colorado, and would redeliver the gas for the account of Amoco in Sweetwater County, Wyoming.

CIG states that the maximum daily, average daily and annual quantities that it would transport for Amoco would be 50,000 Mcf of natural gas, 20,000 Mcf of natural gas and 7,300,000 Mcf of natural gas, respectively.

CIG indicates that in Docket No. ST90-333, filed with the Commission, it reported that transportation service for Amoco had begun on October 1, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 29. Southern Natural Gas Company

[Docket No. CP89-288-000] November 22, 1989.

Take notice that on November 17, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-266-000 a request for authorization pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act [18 CFR 157.205] to abandon certain regulating and measurement facilities and to change the operation of an existing delivery point by shifting contract demand from one point to another and by altering the contract delivery pressure at one point pursuant to Southern's blanket certificate of public convenience and necessity issued in Docket No. CP82-406-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern states that it is currently authorized to sell and deliver natural gas to Alabama Gas Corporation (Alagasco) at the Green-Hale Delivery Point (Greene-Hale) and the Tuscaloosa No. 2 Point of Delivery (Tuscaloosa No. 2) under a Service Agreement between Southern and Alagasco.

Southern explains that the Greene-Hale and Tuscaloosa No. 2 meter stations lie adjacent to each other on Southern's pipeline system. Southern and Alagasco have agreed that Southern may consolidate deliveries to Alagasco at Tuscaloosa No. 2, which would be more efficient for both parties, it is explained. Therefore, Southern requests authorization to abandon the Greene-Hale meter station and transfer the contract demand assigned to Greene-Hale to the Tuscaloosa Area Delivery Point.

Southern states that it currently delivers gas supplies to Alagasco at Tuscaloosa No. 2 at a contract delivery pressure of 300 psig. Southern explains that Alagasco has requested, and Southern has agreed to deliver mainline pressure at Tuscaloosa No. 2. As a result of the increased delivery pressure, Southern further proposes to abandon two 3-inch regulators and appurtenant facilities at Tuscaloosa No. 2, which will no longer be necessary upon delivery of main line pressure.

Southern states that the abandonment of facilities, shift in contract demand, and increase in delivery pressure proposed in this application would not result in any termination of service, and that the changes would not result in a change to the total contract demand delivered to Alagasco. Further, Southern states that (1) it has sufficient capacity to accomplish deliveries at Tuscaloosa No. 2 at the revised delivery pressure and change in contract demand without detriment or disadvantage to its other customers; (2) deliveries at the increased delivery pressure would have no impact on Southern's peak day and annual deliveries; and (3) the abandonment and change are not prohibited by any existing tariff of Southern.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 30. Southern Natural Gas Company

[Docket No. CP90-269-000] November 24, 1989.

Take notice that on November 21, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP90–269–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Texican Natural Gas Company (Texican), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set

forth in the application which is on file with the Commission and open to public inspection.

Southern states authorization to transport, on an interruptible basis, up to a maximum of 10,000 MMBtu of natural gas per day for Texican from receipt points located in Louisiana, Offshore Louisiana, Texas, Offshore Texas, Mississippi and Alabama to a delivery point located in Aiken County, South Carolina. Southern anticipates transporting 5,479 MMBtu of natural gas on an average day and an annual volume of 2,000,000 MMBtu.

Southern states that the transportation of natural gas for Texican commenced September 22, 1989, as reported in Docket No. ST90-123-000, for a 120-day period pursuant to \$ 284.223(a) of the Commission's Regulations and the blanket certificate issued to Southern in Docket No. CP88-316-000.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 31. Trunkline Gas Company

[Docket No. CP90-259-000] November 24, 1989.

Take notice that on November 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251–1642, filed in Docket No. CP90–259–000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportion service on behalf of Amgas, Inc. (Amgas), under Trunkline's blanket certificate issued in Docket No. CP86–586–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 dt of natural gas per day for Amgas from receipt points located in Illinois, Louisiana, offshore Louisiana, Tennessee, offshore Texas and Texas to a delivery point located in Douglas County, Illinois. Trunkline anticipates transporting, on an average day 25,000 dt and an annual volume of 18,250,000 dt.

Trunkline states that the transportation of natural gas for Amgas commenced October 13, 1989, as reported in Docket No. ST90-403-000, for a 120-day period pursuant to \$ 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86-589-000.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

#### 32. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP90-263-000] November 24, 1989.

Take notice that on November 17, 1989, Northern Natural Gas Company, Division of Enron Corp., (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP90-263-000, an application pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for Enron Oil and Gas Company (Enron), a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated October 16, 1989, Northern requests authority to transport up to 150,000 MMBtu per day of natural gas, on a firm basis, for Enron. Northern states that the agreement provides for it to receive the gas from an existing point of receipt located at Matagorda Island, Block 638, offshore Texas and to redeliver the gas to an existing point of delivery located at Matagorda Island, Block 624, offshore Texas. Enron has informed Northern that it expects to have only 112,500 MMBtu transported on an average day and estimates that 54,750,000 MMBtu would be transported annually. Northern advises that the transportation service commenced on October 26, 1989, as reported in Docket No. ST90-242-000, pursuant to § 284,223 of the Commission's Regulations.

Comment date: January 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

## Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person

wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore. the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27962 Filed 11-29-89; 8:45 am]

#### [Project No. 10248-001 Arkansas]

## F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F & T Energy
Corporation, permittee for the Toad
Suck Ferry L+D No. 8 Project located on
the Arkansas River in Perry County,
Arkansas has requested that its
preliminary permit be terminated. The
preliminary permit was issued on May 1,
1987, and would have expired on April

30, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10248 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27963 Filed 11-29-89; 8:45 am]

#### [Project No. 10249-001 Texas]

### F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F&T Energy
Corporation, permittee for the Lake O'
The Pines Project located on the Cypress
Creek in Marion County, Texas has
requested that its preliminary permit be
terminated. The preliminary permit was
issued on April 30, 1987, and would have
expired on March 31, 1990. The
permittee states that analysis of the
project did not indicate feasibility for
development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10249 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27964 Filed 11-29-89; 8:45 am]
BILLING CODE 6717-01-M

## [Project No. 10250-001 Arkansas]

## F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F&T Energy Corporation, permittee for the DeQueen Lake Dam Project located on the Rolling Fork River in Sevier County, Arkansas has requested that its preliminary permit be terminated. The preliminary permit was issued on April 21, 1990, and would have expired on March 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10250 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27965 Filed 11-29-89; 8:45 am]

#### [Project No. 10247-001 Texas]

#### F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F & T Energy
Corporation, permittee for the Wright
Patman Dam Project located on the
Sulphur River in Bowie County, Texas
has requested that its preliminary permit
was issued on May 11, 1987, and would
have expired on April 30, 1990. The
permittee states that analysis of the
project did not indicate feasibility for
development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10247 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27966 Filed 11-29-89; 8:45 am] BILLING CODE 6717-01-M

## [Project No. 10251-001 Arkansas]

## F & T Energy Corp.; Surrender of Preliminary Permit

November 24, 1989.

Take notice that F & T Energy Corporation, permittee for the Dierks Lake Dam Project located on the Saline River in Sevier County, Arkansas has requested that its preliminary permit be terminated. The preliminary permit was issued on April 21, 1987, and would have expired on March 31, 1990. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on October 26, 1989, and the preliminary permit for Project No. 10251 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27967 Filed 11-29-89; 8:45 am]

#### [Docket No. RP89-245-001]

## Palute Pipeline Co.; Compliance Filing

November 24, 1989.

Take notice that on November 20, 1989, Paiute Pipeline Company (Paiute) tendered for filing Substitute Original Sheet No. 11.

Paiute states that the purpose of this filing is to comply with Ordering Paragraph (1) of the October 27, 1989 order issued by the Commission in the above-referenced docket. In its order, the Commission directed Paiute to revise its original filing to reflect the allocation of take-or-pay costs direct billed by Northwest Pipeline Corporation only to Paiute's firm sales customers. Paiute has requested waiver of the Commission's regulations to permit an effective date of October 1, 1989 for Substitute Original Sheet No. 11.

Paiute states that copies of this filing have been mailed to all parties of record and interested State commissions in the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such protests should be filed on or before December 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27968 Filed 11-29-89; 8:45 am] BILLING CODE 6717-01-M

#### [Docket No. CP89-759-001]

#### Transcontinental Gas Pipe Line Corp.; Sale of Natural Gas

November 21, 1989.

Take notice that on October 31, 1989, as supplemented on November 16, 1989, Transcontinental Gas Pipe Line Corporation (Transco), 2800 Post Oak Boulevard, Houston, Texas 77251, submitted the following information regarding the sale of natural gas to be made to an affiliate under Transco's Rate Schedule IS-1, pursuant to the authorization granted by order in Docket No. CP89-759-000 issued March 4, 1989 (46 FERC ¶ 61,303).

- (1) Name of Buyer: TXG Gas Marketing Company (TXG)
- (2) Location of Buyer: Owensboro, Kentucky
- (3) Affiliation between Transco and Buyer: TXG and Transco are both subsidiaries of Transco Energy Company.
- (4) Nature of the involvement of the affiliate: purchase for resale
- (5) Term of Sale: one (1) year commencing December 1, 1989
- (6) Estimated Total and Maximum Daily Quantities:
- Daily Quantity—100,000 MMBtu Estimated Total—36.5 Bcf
- (7) Rates: Maximum—100 percent load factor rate, as adjusted, currently on file: \$2.04
  - Minimum—Transco's Unit Price for gas: \$1.72 plus variable costs
  - To be charged during billing period: minimum rate.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission.

Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 24, 1989. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Transco may sell gas for 120 days from the date of commencement of service or

until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27969 Filed 11-29-89; 8:45 am]

#### [Docket No. RP90-43-000]

## Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 24, 1989.

Take notice that Transwestern
Pipeline Company ("Transwestern") on
November 17, 1989, tendered for filing,
as part of its FERC Gas Tariff, Second
Revised Volume No. 1, the following
tariff sheets proposed to be effective
December 17, 1989:

1st Revised Sheet No. 86A Original Sheet No. 86B

Transwestern states that by orders issued May 11, 1988 and July 29, 1988, in Docket No. CP88-99-000 et al., the Commission authorized Transwestern to establish a Gas Inventory Charge ("GIC") subject to certain conditions. Among the conditions imposed was the requirement that Transwestern terminate its PGA clause and close out its Account No. 191 upon implementation of a GIC. Section 24.10 of the General Terms and Conditions of Transwestern's FERC Gas Tariff provides that on or before March 1, 1990, Transwestern shall bill or refund, as appropriate, all Account No. 191 costs actually paid or incurred before December 31, 1989.

Transwestern proposes a revision to Substitute Original Sheet No. 86A to provide a "litigation exception" to the requirement that all amounts to be direct billed be paid on or before December 31, 1989. Specifically, the "litigation exception" proposed herein provides that Transwestern will be permitted to direct bill producer billing dispute amounts ultimately determined, either through settlement or resolution of court litigation or arbitration proceedings, for which such litigation or arbitration proceedings were pending on December 31, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 1, 1989. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-27970 Filed 11-29-89; 8:45 am] BILLING CODE 6717-01-M

# ENVIRONMENTAL PROTECTION AGENCY

[ECAO-RTP-0327; FRL. 3692-4]

#### Alternative Fuels Research Strategy; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Meeting.

SUMMARY: This notice announces an expert, peer-review workshop to be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate preparation of a draft document titled "Alternative Fuels Research Strategy." The workshop site is the Washington Duke Inn, 3001 Cameron Blvd., Durham, North Carolina 27706, (919) 490–0999.

DATES: The workshop will be held December 6–8, 1989, from approximately 9:00 a.m. to 5:00 p.m. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT:
J. Michael Davis, Ph.D., U.S.
Environmental Protection Agency,
Office of Health and Environmental
Assessment, Environmental Criteria and
Assessment Office, MD-52, Research
Triangle Park, North Carolina 27711,
[919] 541-4162 or (FTS) 629-4162.

SUPPLEMENTARY INFORMATION: The Office of Research and Development of the U.S. Environmental Protection Agency (EPA) is preparing an "Alternative Fuels Research Strategy." The purpose of this Research Strategy is to summarize scientific issues and identify research activities and assessments needed to improve the scientific understanding and quantitative estimation of the health and environmental benefits and risks attendant to the introduction and use of alternative fuels in comparision to those associated with the use of conventional petroleum fuels. The ultimate goal of this Research Strategy is to lay the foundation for obtaining information useful in quantitative, comparative risk

assessments for human health, ecosystem, and global warming effects.

One major impetus for this effort lies in the Alternative Motor Fuels Act of 1988 (Public Law 100-494). This legislation requires the Administrator of EPA to prepare a Report to Congress every two years, starting in December 1990, on the positive and negative environmental impacts associated with alternative fuels as compared to gasoline and diesel fuels. The Act identifies methanol, ethanol, and compressed natural gas as alternatives to conventional petroleum-distillate fuels. In addition to these possible replacements for conventional fuels, the Research Strategy considers reformulated gasoline blends. For each of these fuels, the Research Strategy examines issues and research needs related to: stationary and mobile source emissions associated with fuel production, distribution, and utilization; emissions transport, transformation, and fate in air, soil, and water; human and ecosystem exposure; health effects, including pharmacokinetics, animal inhalation toxicology, human clinical studies, epidemiology, and cancer and non-cancer health effects; aquatic and terrestrial ecosystem effects; and risk reduction/control technologies. Implications for global warming are also noted where emissions of radiatively importance trace gases are involved.

It is expected that the worshop will be conducted by dividing into three subgroups: (1) Emissions, atmospheric processes, exposure, and risk reduction/ control technology; (2) human health effects; and (3) ecosystem fate, exposure, and effects. Plenary sessions will be held at the beginning and conclusion of the meeting. Only limited time will be available for observers to comment. Because one purpose of this Research Strategy is to provide guidance for non-EPA as well as EPA research in the area of alternative fuels, Organizations with research interests related to conventional and alternative fuels are encouraged to communicate their interests to EPA. Members of the public wishing to attend the meeting should contact Dr. J. Michael Davis in advance at the address noted above and, also, identify whether they wish to make a statement at the workshop. Following this workshop, the Research Strategy will be revised and an external review draft released for further public comment and EPA Science Advisory Board (SAB) review.

Dated: November 24, 1989.

#### Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 89-28036 Filed 11-29-89; 8:45 am] BILLING CODE 6560-50-M

#### [FRL-3692-3]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act; Spectra-Chem, Inc. and William Flynn

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental
Protection Agency is proposing to enter
into an administrative settlement under
section 122(h) of the Comprehensive
Environmental Response,
Compensation, and Liability Act of 1980,
as amended (CERCLA), 42 U.S.C.
9622(h). This proposed settlement is
intended to resolve the liability under
CERCLA of Spectra-Chem, Inc. and
William Flynn for response costs
incurred at the Spectra-Chem facility in

Oregon, Wisconsin.

DATE: Comments must be provided on or before January 2, 1990.

ADDRESS: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, and should refer to: In Re Spectra-Chem site in Oregon,

#### FOR FURTHER INFORMATION CONTACT:

Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, 5CS-TUB-3, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-0562.

Notice of Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the Spectra-Chem hazardous waste site at 295 Market Street in Oregon, Wisconsin. The agreement was approved, subject to review by the public pursuant to this Notice, by EPA Region V on April 19, 1989. Spectra-Chem, Incorporated and William Flynn have executed binding certification of their consent to participate in the settlement.

Under this proposed settlement, parties have agreed that U.S. EPA will receive the proceeds of the sale of the Spectra-Chem property, which was the subject of removal activities by EPA from December 20, 1985 through January 8, 1986. Spectra-Chem, Inc. and William Flynn will make their best efforts to obtain the highest possible price for the property. Prior written approval from EPA will be required for sale of the property at less than the appraised value.

EPA is entering into this agreement under the authority of section 122(h) and 107 of CERCLA. Section 122(h) authorizes EPA to settle a claim under Section 107 for response costs incurred if the claim has not been referred to the Department of Justice for further action. Under this authority, the agreement proposes to settle with Spectra-Chem, Inc. and William Flynn.

The Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this Notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois 60604. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601– 9675.

#### Frank M. Covington,

Acting Regional Administrator.
[FR Doc. 89–28035 Filed 11–29–89; 8:45 am]
BILLING CODE 6580-50-M

### FEDERAL MARITIME COMMISSION

#### Agreement(s) Filed; City of Long Beach Terminal

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

## Agreement No.: 224-003800-004

Title: City of Long Beach Terminal Agreement.

Parties:

City of Long Beach

California United Terminals

Synopsis: The Agreement amends the basic agreement. It revises the description of the assigned premises, adjusts the compensation provisions, and eliminates certain obsolete provisions. The entire basic agreement has beens restated.

By Order of the Federal Maritime Commission.

Dated: November 24, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-27984 Filed 11-29-89; 8:45 am] BILLING CODE 6730-01-M

### **FEDERAL RESERVE SYSTEM**

## Agency Forms Under Review

November 22, 1989.

#### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before December 10, 1989.

ADDRESS: Comments, which should refer to OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary,

Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a)

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

### Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Report

1. Report title: Report on Terms of Credit Card Plans. Agency form number: FR 2572. OMB Docket number: 7100–0239. Frequency: Semiannual. Reporters: Financial institutions. Estimated number of reporters: 175. Average number of hours per response:

Annual reporting hours: 350.
Small businesses are not affected.

#### General Description of Report

The Board is authorized to collect the information contained in this report by Section 5 of the Fair Credit and Charge Card Act of 1988 (Pub. Law No. 100–583, 102 Stat. 2960). Further, the Board may compel creditors to provide the information contained on this report pursuant to Section 136 of the Truth in Lending Act (15 U.S.C. § 1646(a)).

This semiannual report will collect credit card price and availability information from a sample of financial institutions. The sample of financial institutions will be comprised of credit card plan information from the largest 175 issuers of bank credit cards. Such issuers include commercial banks as well as thrift organizations (savings and loan associations and savings banks). In addition, the report will include any financial institution that notifies the

Federal Reserve Banks that they would like to participate. Financial institutions wishing to file the initial January 31, 1990 report, should contact the Federal Reserve Bank located in their district prior to January 1, 1990. This information will be assimilated into a report and made available to Congress and the public on a semiannual basis.

Board of Governors of the Federal Reserve System, November 22, 1989.

#### William W. Wiles,

Secretary of the Board.
[FR Doc. 89–27991 Filed 11–29–89; 8:45 am]
BILLING CODE 6210-01-M

## Agency Forms Under Review

November 24, 1989.

#### Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve Sysem (Board) its approval authority under the Paperwork Reduction Act of 1980, as 5 CFR 1320.9, "to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before December 21, 1989.

ADDRESS: Comments, which should refer to the OMB Docket number, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m. except as provided in \$ 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files upon approval may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 [202–452–3822].

Proposal To Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Report

 Report title: Application for Employment with the Board of Governors of the Federal Reserve System.

Agency form numbers: N.A.

OMB Docket number: 7100–0181.

Frequency: On occasion.

Reporters: Individuals.

Annual reporting hours: 3,500.

Estimated average hours per response: 0.5.

Number of respondents: 7,000. Small businesses are not affected.

## General Description of Report

This information collection is required to obtain a benefit [12 U.S.C. 244 and 248(1)] and is given confidential treatment [5 U.S.C. 552(a) and 552(b) (2) and (6)].

The Application for Employment with the Board of Governors of the Federal Reserve System collects information needed to determine the qualifications, suitability, and availability of applications for employment with the Board and of current Board employees for reassignment, reinstatement, transfer, or promotion. The completed form may also be used to examine, rate, or assess the applicant's qualifications and to determine if the applicant is entitled to rights or benefits under certain laws and regulations.

Board of Governors of the Federal Reserve System, November 24, 1989.

William W. Wiles,

Secretary of the Board. [FR Doc. 89-27992 Filed 11-29-89; 8:45 am]

BILLING CODE 8210-01-M

### Dunlap Iowa Holding Co., et al.: Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 21, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Dunlap Iowa Holding Co., Dunlap. towa; to increase its lending authority from \$150,000 to \$500,000. Applicant currently makes and services loans subject to the commitment that the dollar volume extended or purchased does not exceed \$150,000.

B. Federal Reserve Bank of St. Louis Kandall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mid-South Bancorp, Inc., Franklin, Kentucky; to acquire General Trust Company, Nashville, Tennessee, and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 24, 1989. Jennifer J. Johnson, Associate Secretary of the Board.

[FR Doc. 89-27993 Filed 11-29-89; 8:45 am] BILLING CODE 6210-01-M

### High Point Bank Corp., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 20, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia

1. High Point Bank Corporation, High Point, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of High Point Bank and Trust Company, High Point, North Carolina.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. International Trade Bankcorp, Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of

International Trade Bank of Atlanta, Atlanta, Georgia, a de novo bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois

1. Royal Bancshares, Inc., Elroy Wisconsin; to become a bank holding company by acquiring 97.63 percent of the voting shares of Bank of Elroy, Elroy, Wisconsin.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Kirbyville Bancshares, Inc., Beaumont, Texas; to acquire 100 percent of the voting shares of First National Bank of Woodville, Woodville, Texas.

2. Kirbyville Bancshares, Inc., Beaumont, Texas; merge with Vidor Bancshares, Inc., Vidor, Texas, and thereby indirectly acquire Plaza National Bank, Beaumont, Texas, and Vidor State Bank, Vidor, Texas.

3. Thompson Financial, Ltd., Fort Worth, Texas; acquire 3.80 percent of the voting shares of Texas Security Bancshares, Inc., Fort Worth, Texas, and thereby indirectly acquire Central Bank and Trust, Fort Worth, Texas, and North Fort Worth Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, November 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board. [FR Doc. 89-27994 Filed 11-29-89; 8:45 am] BILLING CODE 6210-01-M

#### The Mitsul Bank, Limited, et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted,

these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources. decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13,

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. The Mitsui Bank, Limited, Tokyo, Japan; to merge with Taiyo Kobe Bank & Trust Company, New York, New York.

In connection with this application,
Applicant also proposes to operate Bank
as a limited purpose trust company,
subsequent to its conversion from a
bank to a nonbank, for the period
between the time of the merger and
January 1, 1991 and to engage in trust
company activities pursuant to
\$ 225.25(b)(3) of the Board's Regulation
Y.

Board of Governors of the Federal Reserve System, November 24, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.
[FR Doc. 89–27995 Filed 11–29–89; 8:45 am]
BILLING CODE 8210-01-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Ald to Needy Aged, Blind, or Disabled Persons for October 1, 1990 Through September 30, 1991

AGENCY: Office of the Secretary, HHS. ACTION: Notice.

SUMMARY: The Federal Percentages and Federal Medical Assistance Percentages for Fiscal Year 1991 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 1990 through September 30, 1991. This notice announces the calculated "Federal percentages" and "Federal medical assistance percentages" that we will use in determining the amount of Federal matching in State welfare and medical expenditures. The table gives figures for each of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Programs under title XIX of the Act exist in each jurisdiction; title IV-A programs in all jurisdictions except American Samoa and the Northern Mariana Islands; programs under titles I, X, and XIV operate only in Guam and the Virgin Islands; while a program under title XVI (AABD) operates only in Puerto Rico. The percentages in this notice apply to State expenditures for assistance payments and medical services (except family planning which is subject to a higher matching rate). The statute provides separately for Federal matching of administrative costs.

Sections 1101(a)(8) and 1905(b) of the Act, as revised by section 9528 of Pub. L. 99-272, require the Secretary of Health and Human Services to publish these percentages each year. The Secretary is to figure the percentages, by formulas in sections 1101(a)(8) and 1905(b) of the Act, from the Department of Commerce's statistics of average income per person in each State and in the Nation as a whole. The percentages are within upper and lower limits given in those two sections of the Act. The statute specifies the percentages to be applied to Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

The "Federal percentages" are for Aid to Families with Dependent Children (AFDC) and aid to needy aged, blind, or disabled persons, and the "Federal medical assistance percentages" are for Medicaid. However, under section 1118 of the Act, States with approved Medicaid plans may claim Federal matching funds for expenditures under approved State plans for these other programs using either the Federal percentage or the Federal medical assistance percentage. These States may claim at the Federal medical assistance percentage without regard to any maximum on the dollar amounts per recipient which may be counted under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) of the Act.

pates: The percentages listed will be effective for each of the 4 quarter-year periods in the period beginning October 1, 1990 and ending September 30, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Emmett Dye, Office of Family Assistance, Family Support Administration, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone [202] 252-5041.

(Catalog of Federal Domestic Assistance Program Nos. 13.808—Assistance Payments— Maintenance Assistance (State Aid); 13.714— Medical Assistance Program)

Dated: November 28, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

BILLING CODE 4150-04-M

Federal percentages and Federal medical assistance percentages, effective october 1, 1990-September 30, 1991 (Fiscal year 1991)

State	Federal percentages	Federal medical assistance percentages	
Alabama	65.00	72.73	
Alaska	50.00	50.00	
American Samoa	50.00	50.00*	
Arizona	57.46	61.72	
Arkansas	65.00	75.12	
California	50.00	50.00	
Colorado	50.00	53.59	
Connecticut	50.00	50.00	
Delaware	50.00	50.00	
District of Columbia	50.00	50.00	
Florida	50.00	54.46	
Georgia	57.04		
	50.00	61.34	
Guam	7.77.77	50.00*	
Hawaii	50.00	54.14	
Idaho	65.00	73.65	
Illinois	50.00	50.00	
Indiana	59.16	63.24	
Iowa	59.35	63.41	
Kansas	52.61	57.35	
Kentucky	65.00	72.96	
Louisiana	65.00	74.48	
Maine	59.43		
	50.00	63.49	
Maryland	2/3/2/3/3/	50.00	
Massachusetts	50.00	50.00	
Michigan	50.00	54.17	
Minnesota	50.00	53.43	
Mississippi	65.00	79.93	
Missouri	55.35	59.82	
Montana	65.00	71.73	
Nebraska	58.56	62.71	
Nevada	50.00	50.00	
New Hampshire	50.00	50.00	
New Jersey	50.00	50.00	
New Mexico	65.00	73.38	
New York	50.00	50.00	
	15 The State of th		
North Carolina	62.89 65.00	66.60 70.00	
Northern Mariana Islands.	50.00	50.00	
Ohio	55.48	59.93	
Oklahoma	65.00		
Oregon	59.45	69.65	
		63.50	
Pennsylvania	51.82	56.64	
Puerto Rico	50.00	50.00*	
Rhode Island	50.00	53.74	
South Carolina	65.00	72.58	
South Dakota	65.00	71.69	
Tennessee	65.00	68.57	
Texas	59.48	63.53	
Utah	65.00	74.89	
Vermont	57.74	61.97	
Virgin Islands	50.00	50.00*	
Virginia	50.00	50.00	
Vashington	50.00	50.00	
West Virginia	F	54.21	
Visconsin	65.00	77.00	
yoming	55.14	59.62	
	64.60	68.14	

<sup>\*</sup>For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI and Part A of title IV will be 75 per centum.

<sup>[</sup>FR Doc. 89-28188 Filed 11-29-89; 8:45 am]
BILLING CODE 4150-04-C

# Privacy Act of 1974; Deletion of Notice of System of Records

AGENCY: Office of the Secretary, HHS. ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of the Assistant Secretary for Planning and Evaluation is deleting one Privacy Act System of Records previously published in the Federal Register.

EFFECTIVE DATE: November 30, 1989.

ADDRESS: Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: For information regarding this action, contact Joan Turek-Brezina, Privacy Act Officer (telephone: 202–245–6141).

Notice is hereby given that the Department of Health and Human Services is deleting the following notice which describes a system of records maintained by the Office of the Assistant Secretary for Planning and Evaluation:

System No.	System name	Date published in the FEDERAL REGISTER
09-90-0086	Medicare Mental Health Demonstration Evaluation.	10/13/82 (47 FR 45550).

The records formerly covered by the system notice for the Medicare Mental Health Demonstration Evaluation have been certified as being properly destroyed or erased by the contractor, Macro Systems, Inc.

Dated: November 17, 1989.

#### Ann Segal

Executive Assistant to the Assistant Secretary for Planning and Evaluation. [FR Doc. 89–27990 Filed 11–29–89; 8:45 am]

BILLING CODE 4150-04-M

# Health Resources and Services Administration

Announcement of Proposed
Categories of Facilities Determined To
Have a Critical Shortage of Nurses for
Service Obligations Under the
Program of Scholarships for the
Undergraduate Education of
Professional Nurses

The Health Resources and Services Administration announces the categories of health facilities which the Secretary (HRSA) is proposing to determine to have a critical shortage of nurses for purposes of the fulfillment of service obligations by individuals who first receive a scholarship under the Scholarships for the Undergraduate Education of Professional Nurses Grant Program for academic years 1989–90 and 1990–91. This program is authorized under section 843 of the Public Health Service Act (the Act), as added by Public Law 100–607. Comments are invited on the categories being proposed.

#### Purpose

The Scholarships for the Undergraduate Education of Professional Nurses Grant Program is designed to provide financial assistance to individuals who are enrolled or accepted for enrollment as undergraduate nursing students in diploma, associate, or baccalaureate degree programs or in programs of nursing education leading to first degrees in professional nursing and who are in financial need with respect to attending their schools. A scholarship recipient must agree to serve full-time upon graduation as a registered nurse for a period of not less than 2 years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a certified nursing facility, in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

#### **Definitions of Facilities**

The following definitions, arranged alphabetically, apply to those facilities specified in section 843 of the Act and have been included in application materials mailed to schools.

"Community Health Center" means an entity (as defined under section 330(a) of the Act and in regulations at 42 CFR 51c.102(c) which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides:

(1) Primary health services;

(2) As may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health care services;

(3) Referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services;

(4) Environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and

other environmental factors related to health:

(5) Information on the availability and proper use of health services, for all residents of the area it serves; and

(6) Patient case management services (including outreach, counseling, referral, and follow-up services), for all residents of the area it serves (referred to in this section as a "catchment area").

"Indian Health Service Center" means a health care facility (whether operated directly by the Indian Health Service or operated by a tribal contractor or grantee under the Indian Self-Determination Act, as described in 42 CFR part 36, subparts H and I), which is physically separated from a hospital, and which provides one or more clinical treatment services, such as physician, dentist or nursing services (as described in 42 CFR 36.11), available at least 40 hours a week for outpatient care to persons of Indian or Alaska Native descent as described in 42 CFR 36.12.

"Migrant Health Center" means an entity (as defined under section 329(a) of the Act and in regulations at 42 CFR 56.102(g)) which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides:

(1) Primary health services;

(2) As may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health care services;

(3) Referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services;

(4) Environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health;

(5) As may be appropriate for particular centers (as determined by the centers), infections and parasitic disease screening and control;

(6) As may be appropriate for particular centers, accident prevention programs, including prevention of excessive pesticide exposure; and

(7) Information on the availability and proper use of health services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent

in the language spoken by a predominant number of such individuals, for migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, within the area it serves and individuals who have previously been migratory agricultural workers but can no longer meet the definition of migratory agricultural workers because of age or disability, and members of their families within the area it serves.

(a) "Migratory agricultural worker"
means an individual whose principal
employment is in agriculture on a
seasonal basis, who has been so
employed within the last 24 months, and
who establishes for the purpose of such
employment a temporary abode.

(b) "Seasonal agricultural worker" means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

'Native Hawaiian Health Center" means an entity (as defined in the Native Hawaiian Health Care Act of 1988 (Pub. L. 100-579 [S. 136])-(A) which is organized under the laws of the State of Hawaii, (B) which provides or arranges for health care services through practitioners licensed by the State of Hawaii, where licensure requirements are applicable, (C) which is a public or nonprofit private entity, and (D) in which Native Hawaiian health practitioners significantly participate in the planning, management, monitoring, and evaluation of health services.

"Nursing Facility" means a facility as defined under section 1919(a) of the Social Security Act (as such section is in effect during Fiscal Year 1991 and subsequent Fiscal Years), except that for Fiscal Year 1989 and 1990, such term means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1905 of the

Social Security Act.
"Public Hospital" means a facility (as defined in regulations at 42 CFR 242.1) owned by a State or unit of local government or by an intrumentality thereof, or owned by a public benefit corporation established by a State or unit of local government or by an instrumentality thereof; and (A) which provides community services for inpatient medical care of the sick or injured (including obstetrical care); (B) where not more than 50 percent of the total patient days during any year are customarily assignable to the categories of chronic convalescent and rest, drug and alcoholic, epileptic, mentally deficient, mental, nervous and mental,

and tuberculosis; (C) which is a facility licensed or regulated by the State (or, if there is no State law providing for such licensing or regulation by the State, by the municipality or other political subdivision in which the facility is located).

"Rural Health Clinic" means an entity (as defined under section 1861(aa)(2) of the Social Security Act and in regulations at 42 CFR 491.2) which:

(1) Is primarily engaged in furnishing to outpatients, physicians' services and services furnished by a physician assistant or by a nurse practitioner, as well as such services and supplies covered under Sections 1861(s)(2)(A) and 1861(s)(10) of the Social Security Act:

(2) In the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the revisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of the physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(3) Maintains clinical records on all patients;

(4) Has arrangements with one or more hospitals, having agreements in effect under section 1866 of the Act, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(5) Has written policies, which are developed with the advice of (and with provisions for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services which it furnishes:

(6) Has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (5) and relating to the provision of the clinic's service:

(7) Directly provides routine diagnostic service, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this title;

(8) In compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(9) Has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(1) Meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

#### Proposed Facilities Having a Critical Shortage of Nurses

In addition to the types of facilities specified above, the following categories of facilities are proposed as meeting the criterion of a "health facility having a critical shortage of nurses" for purposes of fulfillment of service obligations by nurses who first received scholarships under the Scholarships for the Undergraduate Education of Professional Nurses program for academic years 1989–90 and 1990–91.

(1) All rural hospitals, as classified by the Medicare and Medicaid programs.

(2) All hospitals classified as "disproportionate share" hospitals. "Disproportionate share" hospitals are those that serve a disproportionately larger share of low-income patients than other hospitals, as determined by the Medicare and Medicaid Programs.

(3) Home health agencies approved for Medicare and Medicaid reimbursement.

(4) State and local health departments.

HRSA is proposing a broad definition of the term "health facility having a critical shortage of nurses" for individuals who first received scholarships during the initial 2 years of implementation of the Scholarships for the Undergraduate Education of Professional Nurses Program. This broad interpretation is based on HRSA's view that this program was established primarily to increase access to the nursing profession for financially needy individuals, particularly those from

disadvantaged backgrounds, and secondly, to meet selected priority needs

for nursing services.

The proposed approach for determining where critical shortages of nurses exist is consistent with the finding of former Secretary Bowen's Commission on Nursing that the current shortage of nurses cuts across all health care delivery settings. HRSA plans to review the proposed definition on a periodic basis to determine whether modifications for purposes of new scholarship recipients should be made to meet changing critical needs for nursing services.

Interested persons are invited to comment on the proposed categories.

Normally, the comment period is 60 days. However, the comment period has been reduced to 30 days due to the need to inform nursing students of eligible facilities as soon as possible.

Written comments should be addressed to Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–48, 5600 Fishers Lane,

Rockville, Maryland 20857.

All comments received will be available for public inspection and copying in the Division of Student Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

This program is listed at 13.182 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372,

Intergovernmental Review of Federal Programs (as implemented by 45 CFR Part 100).

Dated: November 24, 1989.

John H. Kelso,

Acting Administrator. [FR Doc. 89-28030 Filed 11-29-89; 8:45 am]

BILLING CODE 4160-15-M

#### Advisory Council on Nurses Education; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92—463), announcement is made of the following National Advisory body scheduled to meet during the month of January 1990:

Name: Advisory Council on Nurses Education.

Date and Time: January 24–25, 1990, 9 a.m. Place: The Maryland Room, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Open on August 16, 9:00 a.m.–12:30 p.m. Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendment of 1985 (Pub. L. 99–92). The Council also performs final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will include announcements; consideration of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing, and staff reports. The meeting will be closed to the public on August 16, 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/ Nurse Midwifery applications, Special Project Grants applications and Nursing Opportunities for Individuals from Advantaged Backgrounds applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, room 5C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6193.

Agenda Items are subject to change as priorities dictate.

Date: November 24, 1989.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 89-28029 Filed 11-29-89; 8:45 am]

#### DEPARTMENT OF THE INTERIOR

Bureau of Land Management [UT-940-00-4121-14: (UTU-64263)]

[01-340-00-4121-14.(010-01200)]

Coal Lease Offering By Sealed Bid

AGENCY: Bureau of Land Management.

Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in lands hereinafter described in Carbon and Emery Counties, Utah, will be offered for competitive lease by sealed bid of \$100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). However, no bid

will be accepted for less than fair

market value as determined by the authorized officer.

p.m., Thursday, January 11, 1990. Sealed bids must be submitted on or before 10:00 a.m., Thursday, January 11, 1990.

ADDRESS: The lease sale will be held in Salon I, Main Floor of the Red Lion Inn, 255 West Temple, Salt Lake City, Utah. Sealed bids must be submitted to the Cashier, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303.

COAL OFFERED: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Carbon and Emery Counties, Utah, approximately sixteen miles southwest of Price, Utah:

T. 14 S., R. 7 E., SLM, Utah Sec. 34, lots 3, 4, N½SE¼. T. 15 S., R. 7 E., SLM, Utah

Sec. 2, lots 2-7, 10-12, SW¼, W½SE¼; Sec. 3, lots 1, 2, 7-10, E½SE¼,E½W½SE¼; Sec. 10, E½E½, E½NW¼NE¼; Sec. 11, W½, W½E½;

Sec. 14, NW¼, NW¼NE¼; Sec. 15, E½E½NE¼.

Containing 1,987.46 Acres

One economically recoverable coal bed, the Wattis Seam, is found in this tract. The seam averages 7.86 feet in thickness. This tract contains an estimated 7,632,000 tons of recoverable high volatile B bituminous coal. The estimated coal quality using weighted average of samples on an as-received basis is:

12,622 BTU/lb;

6.27 Percent moisture;

.52 Percent sulphur;

6.36 Percent ash;

45.90 Percent fixed carbon;

42.49 Percent volatile matter.

(Totals do not equal 100% due to

rounding)
RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rate of \$3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with 30 CFR 203.200.

NOTICE OF AVAILABILITY: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111–2303 or in the Public Room (Room 400). All case file documents and written comments submitted by the public on Fair Market Value or royalty rates, except those

portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

James M. Parker,

State Director.

[FR Doc. 89-27978 Filed 11-29-89; 8:45 am] BILLING CODE 4310-DQ-M

#### [WY-040-09-4111-08]

Environmental Impact Statement; Bridger-Teton National Forest Plan, WY

**AGENCY:** Bureau of Land Management, Interior.

ACTION: Adoption of Final Environmental Impact Statement for Bridger-Teton National Forest Plan, Wyoming.

SUMMARY: Pursuant to 40 CFR 1506.3 and Department of Interior Manual 516DM, notice is hereby given that the Bureau of Land Management intends to adopt the Draft and Final Environmental Impact Statements (DEIS/FEIS) on the Land and Resources Management Plan (LRMP) for the Bridger-Teton National Forest for the purpose of leasing minerals.

DATE: Adoption of the FEIS for the Bridger-Teton Forest Plan will be considered official January 2, 1990. A Record of Decision (ROD) covering BLM actions related to mineral leasing will be signed after the conclusion of the public comment period designated by the Forest Service, which expires December 31, 1989.

ADDRESS: Any comments, questions, or exceptions which could affect the adoption should be forwarded to Alan Stein, Chief of Planning and Environmental Assistance, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, phone: 307–382–5350.

FOR FURTHER INFORMATION CONTACT: Alan Stein, Chief of Planning and Environmental Assistance, Rock Springs District, Bureau of Land Management, phone: 307–382–5350.

SUPPLEMENTARY INFORMATION: The FEIS for the Bridger-Teton National Forest inadvertently omitted identifying BLM as a cooperating agency in the preparation of the Final EIS. BLM has cooperated in the preparation of those portions of the FEIS related to BLM's mineral leasing authority.

The FEIS meets BLM Supplemental Program Guidance (SPG) requirements for leasable minerals including the development of Reasonable Foreseeable Development Scenarios for affected Management Area (MAs), identification of mineral potential for oil and gas resources within the National Forest, and identification of stipulations which the BLM will utilize in leasing minerals on the Bridger-Teton National Forest. The EIS contains all the necessary information and analysis to allow BLM to make decisions concerning leasable minerials in compliance with the National Environmental Policy Act.

BLM's preferred alternative for the Bridger-Teton LRMP is to offer lands for release, in accordance with Alternative F, which is the Forest Service Preferred Alternative. Prior to offering lands for lease, the Forest Service will be given an opportunity to review lease parcels for plan conformance and application of appropriate lease stipulations. No lease parcels will be offered over the objections of the Forest Service.

Dated: November 24, 1989.

James K. Murkin,

Acting State Director.

[FR Doc. 89–28080 Filed 11–29–89; 8:45 am]

#### [OR931-00-6321-02: GPO-067]

Availability of the Draft Record of Decision for Managing Competing Vegetation on Forest Lands in Western Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft "Record of Decision" emanating from the Final Environmental Impact Statement, Western Oregon Program, Management of Competing Vegetation, February 1989.

SUMMARY: A draft record of decision for managing competing vegetation on forest lands in western Oregon is now available for public review. An integrated pest management program is adopted. The proposed decision prioritizes treatments as follows, (1) Use of effective techniques to prevent development of vegetation management problems, (2) use of effective alternatives to herbicides, and (3) use of effective herbicides. Prescribed burning practices will be modified to reduce emissions hazardous to human health.

DATES: Written comments on the proposed record of decision will be accepted through January 6, 1990.

#### FOR FURTHER INFORMATION CONTACT:

Requests for copies as well as written comments should be addressed to: Tom Aufenthie, Project Lead, Bureau of Land Management, P.O. Box 2965. Portland. Oregon 97208.

Dated: November 21, 1989.

Paul M. Vetterick.

Associate State Director.

[FR Doc. 89-23020 Filed 11-29-89; 8:45 am]

BILLING CODE 4310-33-M

[ID-020-09-4322-12]

Burley District; Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and Agenda for Burley District Grazing Advisory Board.

**SUMMARY:** Notice is hereby given that the Burley District Grazing Advisory Board will meet on January 9, 1990.

The meeting will convene at 9:30 a.m. on January 9, 1990 in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Prioritized Pleasantview allotment project maintenance schedule; (2) Contributions for support of range improvement (8100) projects; (3) Secretary/Treasurer's report; (4) Scheduling of contributed money (7121) projects; (5) Curlew Grazing Association season of use; (6) Range improvement maintenance policy; (7) Information items—(a) Land Pool Exchange Concept; (b) Grazing Advisory Board election.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 10:30 a.m. or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by January 8, 1990 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office, 200 South Oakley Highway, Burley, Idaho, and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATE: January 9, 1990.

ADDRESS: Bureau of Land Management, Burley District Office, 200 South Oakley Highway, Burley, Idaho 83318. FOR FURTHER INFORMATION CONTACT:

Gerald L. Quinn, District Manager, (208) 678-5514

Dated: November 21, 1989.

Gerald L. Quinn,

District Manager.

[FR Doc. 89-28018 Filed 11-29-89; 8:45 am] BILLING CODE 4310-GG-M

[ID-040-4312-04]

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be held Tuesday, January 9, 1990 at 10:00 a.m.

ADDRESS: The meeting will be held at the Salmon River Electric Cooperative. Inc., Conference Room, Challis, Idaho.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Laws 92-463 and 94-579. The purpose for the meeting is to discuss a proposed non-shooting area designation in the Cyprus Mine area, an exclusive right-of-way request for the Cyprus Mine, the BLM budgeting process, and current Salmon District issues.

The meeting is open to the public. Interested persons may make oral statements to the Council between 11:00 a.m. and 11:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by January 5, 1990.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to Roy S. Jackson, District Manager, Salmon District BLM, Bx 430, Salmon, Idaho 83467.

Dated: November 21, 1989.

Roy S. Jackson,

District Manager.

[FR Doc. 89-28019 Filed 11-29-89; 8:45 am]

BILLING CODE 4310-GG-M

[AZ 020-41-5410-10; AZA-24090]

Mineral Interest Application; Arizona

**ACTION:** Notice of Receipt of Conveyance of Mineral Interest Application AZA-24090.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Michael Kettenbach has applied for conveyance of the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 19 S., R. 14 E.,

sec. 21, A11 sec. 22, W½NE¼4, SE¼NE¼, W½, N1/2SE1/4, SW1/4SE1/4.

Containing 1,200 acres, more or less.

Additional information concerning this application may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona

Upon publication of this notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of filing of the application, October 19, 1989, whichever occurs first.

Dated November 20, 1989.

William T. Childress,

Acting District Manager.

[FR Doc. 89-28022 Filed 11-29-89; 8:45 am] BILLING CODE 4310-32-M

[AZ-040-41-5410-10-ZACD; A 21817, A 21818, A 28120, A 21821, A 21822]

Receipt of Conveyance of Mineral Interest Applications in Cochise County, Arizona

AGENCY: Bureau of Land Management, Interior.

**ACTION:** Notice of Receipt of Conveyance of Mineral Interest Applications A 21817, A 21818, A 28120, A 21821, A 21822 in Cochise County Arizona.

SUMMARY: Notice is hereby given that pursuant to Section 209 of the Act of October 21, 1978, 90 Stat. 2757, Messrs. John D. Klump, John L. Klump, Karry K. Klump, Luther W. Klump and Wayne D. Klump have applied to purchase the mineral estate described as follows:

John D. Klump:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 26 E., sec. 20, S½N½, N½S½; sec. 22, SW 4SW 1/4.

T. 13 S., R. 27 E., sec. 29, SW1/4, SW1/4SE1/4; sec. 30, NW 4NE 4, NE 4NW 4. SE14SW14, S1/2SE1/4.

T. 14 S., R. 28 E. sec. 29, N½NE¼, NE¼NW¼, SW¼; sec. 30, SW 4NW 14, S1/2.

T. 15 S., R. 27 E., sec. 1, SE¼NE¼. Containing 1,440.00 acres, more or less. John L. Klump:

#### Gila and Salt River Meridian, Arizona

T. 12 S., R. 32 E., sec. 26, lots 2, 3, 4, NW 1/4SW 1/4; sec. 27, NE1/4SW1/4, N1/2SE1/4; sec. 35, lots 1-4 incl., W1/2W1/2.

T. 13 S., R. 26 E., sec. 35, W 1/2 E 1/2, SW 1/4. Containing 942.87 acres, more or less. Karry K. Klump:

Gila and Salt River Meridian, Arizona

T. 13 S., R. 25 E., sec. 14, lots 5-8 incl., SW 1/4 SE 1/4; sec. 24, lots 4-7 incl. 9, 10, 11, 14, 15, 16, SW 1/4

sec. 26, NW 1/4; sec. 27, lots 1-4 incl.;

sec. 33, S1/2; sec. 34, SW 1/4:

sec. 35, W 1/2NE 1/4, SE 1/4NE 1/4.

T. 13 S., R. 27 E., sec. 27, SW 1/4NW 1/4, NW 1/4SW 1/4, S1/2S1/2; sec. 28, SE¼NE¼, E½SE¼; sec. 33, N1/2; sec. 34, N½N½, SE¼NE¼, SW¼NW¼,

N1/2SE1/4; sec. 35, W½NE¼, NW¼, NW¼SW¼.

T. 13 S., R. 31 E., sec. 27, NW 1/4; sec. 34, W1/2NE1/4.

T. 13 S., R. 32 E., sec. 9. NE 1/4NE 1/4; sec. 27, NE1/4SE1/4NW1/4, N1/2SE1/4 SE¼NW¼; sec. 28, W1/2NE1/4, E1/2NW1/4;

sec. 33, NE 4NW 14.

T. 14 S., R. 25 E., sec. 4, lots 3 and 4, N1/2NW1/4. T. 14 S., R. 26 E.,

sec. 28, S1/2. Containing 4,226.96 acres, more or less. Luther W. Klump:

#### Gila and Salt River Meridian, Arizona

T. 13 S., R. 27 E., sec. 21, SE1/4SE1/4; sec. 22, S1/2SW1/4, SW1/4SE1/4; sec. 27, NW 4NE 4, N 1/2NW 1/4; sec. 28, N1/2NE1/4. Containing 360.00 acres, more or less. Wayne W. Klump:

Gila and Salt River Meridian, Arizona T. 13 S., R. 26 E.,

sec. 14, N1/2;

sec. 15, NE1/4;

sec. 22, N1/2, NE1/4SW1/4, SE1/4;

sec. 23, all;

sec. 24, E1/2NE1/4, W1/2W1/2;

sec. 25. NW1/4;

sec. 26, NE1/4.

T. 13 S., R. 27 E.

sec. 13, S1/2SE1/4NW1/4, E1/2NE1/4SW1/4;

sec. 18, NW 4NW 4, S1/2N1/2, S1/2;

sec. 18, S1/2SE1/4;

sec. 19, N1/2NE1/4, SE1/4NE1/4, NW1/4, S1/2;

sec. 20, all;

sec. 21, N1/2, SW1/4, N1/2SE1/4, SW1/4SE1/4; sec. 31, E1/2E1/2, W1/2NE1/4, NE1/4NW1/4.

T. 14 S., R. 26 E.,

sec. 11, S1/2;

sec. 13, NW 1/4;

sec. 14. N1/2.

Containing 5,760.00 acres, more or less.

Total acres involved is 12,729.83, more or

Upon publication of this Notice in the Federal Register, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date the courts remanded the applications back to the District Office, September 6, 1988, whichever occurs

#### SUPPLEMENTARY INFORMATION:

Additional information concerning this application may be obtained from the San Simon Resource Area Manager, Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

Dated November 21, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89-28016 Filed 11-29-89; 8:45 am]

BILLING CODE 4310-32-M

#### [CO-920-90-4111-15; COC36500]

#### Colorado; Proposed Reinstatement

Notice is hereby given that a petition for reinstatement of oil and gas lease COC36500 for lands in Garfield and Mesa Counties, Colorado, was timely filed and was accompanied by all the required rentals and royalties accruing from August 1, 1989, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5 and 16% percent, respectively.

The lessee has paid the required \$500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective August 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 236-1772.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section. IFR Doc. 89-28023 Filed 11-29-89; 8:45 aml

BILLING CODE 4310-JB-M

#### [CA-010-00-4212-13, CA 25913]

#### **Exchange of Public and Private Lands** in California

REALTY ACTION: Exchange of Public and Private Lands in Amador, Calaveras, El Dorado, Mariposa, Nevada, Tuolumne, and Yuba Counties, CA.

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The following described public land is being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

(Note: It is possible not all of the land identified below will be exchanged. Some parcels may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the offered and selected lands.)

#### Selected Public Land

Amador County, California

T. 7N., R. 10E., M.D.M.

Sec. 14, lots 1, 3, 4, 13, 15,16.

T. 7N., R. 11E., M.D.M.

Sec. 15, SE1/4SE1/4;

Sec. 22, NE<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>. T. 7N., R. 12E., M.D.M.

Sec. 4, lots 10, 11;

Sec. 19, NW 4SW 4: Sec. 22, all public lands within section.

#### Calaveras County, California

T. 4N., R. 10E., M.D.M.

Sec. 15, lots 3, 4, 5, T. 4N., R. 13E., M.D.M.

Sec. 3, lot 5;

Sec. 23, lots 1, 2;

Sec. 28, lots 3, 4.

T. 5N., R. 11E., M.D.M. Sec. 22, lots 16, 18, 19, 20, MS 4046B,

E1/2NE1/4;

Sec. 24, lots 11, 12, N½NW¼NW¼, N1/2NW1/4SW1/4;

Sec. 25, lots 5, 8.

T. 5N., R. 12E., M.D.M.

Sec. 19, E½NE¼, SE¼NW¼NE¼.

T. 6N., R. 14E., M.D.M. Sec. 7, SW 1/4 SE 1/4.

El Dorado County, California

T. 9N. R. 10E., M.D.M.

Sec. 29, lot 7; Sec. 32, lot 3.

T. 9N., R. 11E., M.D.M.

Sec. 12, W1/2NW1/4, N1/2SW1/4.

T. 12N., R. 10E., M.D.M. Sec. 2, SE'4NW'4SW'4NW'4,

SW 4NE 4SW 4NW 4. E1/2SW1/4SW1/4NW1/4. W1/2SE1/4SW1/4NW1/4.

#### Mariposa County, California

T. 3S., R. 15E., M.D.M. Sec. 3, lot 3, SW4NW4; Sec. 35, SW 1/4SE 1/4.

T. 4S., R. 16E., M.D.M.

Sec. 5, lot 4:

Sec. 9, lot 1; Sec. 10, lot 2, SE1/4SE1/4.

T. 4S., R. 18E., M.D.M.

Sec. 31, lot 4; Sec. 33, lot 7.

Nevada County, California

T. 16N., R. 7E., M.D.M.

Sec. 24, SW 1/4NW 1/4. T. 17N., R. 8E., M.D.M.

Sec. 20, S1/2SE1/4NE1/4, N1/2NW1/4SE1/4.

Tuolumne County, California

T. 1S., R. 13E., M.D.M.

Sec. 1, SW1/4SW1/4;

Sec. 11, NW 4NE 14. T. 1N., R. 15E., M.D.M. Sec. 25, E1/2NE1/4.

Yuba County, California

T.18N., R.6E., M.D.M. Sec. 26, NW 4SW 4.

The lands identified above are in addition to property previously published in the Federal Register under the same serial number, CA 25913. Disposal of Federal lands is in conformance with land use planning; these lands are generally isolated parcels which are inaccessible for public

In exchange for Federal land listed above, the United States proposes to acquire wetlands and waterfowl habitat in the Central Valley of California through such conservation groups as the Nature Conservancy, Ducks Unlimited, and Trust for Public Lands.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire unprotected wetlands or agricultural lands suitable for conversion to wetlands in the Central Valley. The Central Valley was identified in 1986 in the international North American Waterfowl Management Plan as an area critically in need of wetlands protection. Approximately 60 percent of waterfowl populations in the Pacific Flyway winter in the Central Valley of California where 93 percent of the wetlands have been destroyed during the past century.

The public interest will be well served by completing this land tenure adjustment through exchange, in association with the North American Waterfowl Management Plan.

The Federal lands would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

Authorized rights-of-way and any other authorized land uses will be identified as prior existing rights.

All necessary clearances, including archaeology and rare plants and animals, shall be granted prior to conveyance of title by the U.S.

Grazing operators who will have their allotments affected by this exchange are entitled to a 2-year adjustment period. However, a lessee may waive this 2-year notice.

Publication of this notice in the Federal Register segregates the public land described herein from all forms of appropriation under the public land laws, including the mining laws, for a period of two years from the date of first publication.

FOR ADDITIONAL INFORMATION: Contact Kay Miller, (916) 985–4474, or at the address Isited below.

ADDRESS: For a period of 45 days from publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA. 95630

Dated: November 22, 1989.

D.K. Swickard,

Area Manager.

[FR Doc. 89-28017 Filed 11-29-89; 8:45 am]

[CO-942-90-4730-12]

#### Colorado; Filing of Plats of Survey

November 20, 1989.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., November 20, 1989.

The supplemental plat creating new lot 6, in section 2, T. 1 S., R. 97 W., Sixth Principal Meridian, Colorado, was accepted September 26, 1989.

The plat representing the dependent resurvey of portions of the Eleventh Standard Parallel North (south boundary, T. 45 N., R. 7 E.), east boundary, and subdivisional lines and the subdivision of certain sections, T. 44 N., R. 7 E., New Mexico Principal

Meridian, Colorado, Group No. 854, was accepted September 11, 1989.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing trhe dependent resurvey of a portion of the Mesa Verde National Park boundary, T. 36 N., R. 14 W., New Mexico Principal Meridian, Colorado, Group No. 896, was accepted September 26, 1989.

The plat representing the dependent resurvey of a portion of the west boundary and the Mesa Verde National Park boundary, T. 35 N., R. 15 W., New Mexico Principal Meridian, Colorado, Group No. 896, was accepted September 26, 1989.

The plat representing the dependent resurvey of a portion of the Mesa Verde National Park boundary, T. 35 N., R. 14 W., New Mexico Principal Meridian, Colorado, Group No. 896, was accepted September 26, 1989.

These surveys were executed to meet certain administrative needs of the National Park Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyer for Colorado. [FR Doc. 89-28021 Filed 11-29-89; 8:45 am] BILLING CODE 4310-JB-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 330X)]

CSX Transportation, Inc.; Abandonment Exemption; in Hopkins and Muhlenberg Counties, KY

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—"Exempt Abandonments" to abandon 5.52 miles of railroad line in Kentucky: (1) Between milepost LHM—131.6, near Newcoal, and milepost LHM—134.03, near Fies, in Hopkins County; and (2) between milepost LHF—126.99, near Millport, and milepost LHF—130.08, near Brier Creek, in Muhlenberg County.

Applicant has certified that: (1) No local traffic has moved over the lines for at least 2 years; (2) any overhead traffic on the lines can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the lines (or a State or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant

within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under "Oregon Short Line R. Co.— Abandonment—Goshen," 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 28, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,1 formal expressions of intent to file an offer of financial assistance under 49 CFR 1152,27(c)(2),2 and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 8, 1989.3 Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by December 18, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and
Environment (SEE) will prepare an
environmental assessment (EA). SEE
will issue the EA by December 1, 1989.
Interested persons may obtain a copy of
the EA from SEE by writing to it (Room
3219, Interstate Commerce Commission,
Washington, DC 20423) or by calling

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See "Exemption of Out-of-Service Rail Lines." 5 L.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

<sup>\*</sup> See "Exempt. of Rail Abandonment—Offers of Finan. Assist.," 4 I.C.C. 2d 164 (1987).

<sup>&</sup>lt;sup>8</sup> The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 22, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-28057 Filed 11-29-89; 8:45 am] BILLING CODE 7035-01-M

#### [Finance Docket No. 31532]

Indiana Hi-Rail Corp.; Lease and Operation Exemption; Norfolk and Western Railway Co. Line Between Douglas, OH and Van Buren, IN

**AGENCY:** Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343, et seq., the lease by Indiana Hi-Rail Corporation (IHR) from Norfolk and Western Railway Company of 77.9 miles of railroad between milepost TS 65.5 in Douglas, OH, and milepost TS 144.2 in Van Buren, IN, subject to standard labor protective conditions.

DATES: This exemption will be effective on December 7, 1989. Petitions for reconsideration must be filed by December 20, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31532 to:

- (1) Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31532, Interstate Commerce Commission, Washington, DC 20423.
- (2) Petitioners' representatives:

John D. Heffer, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street, NW., Suite 1107, Washington, DC 20006.

Robert J. Cooney, Senior General Attorney, Law Department, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721]

#### SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate

Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: November 22, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andrè, Lamboley, and Phillips. Chairman Gradison and Commissioner Andrè dissented in part with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 89-28058 Filed 11-29-89; 8:45 am] BILLING CODE 7035-01-M

#### **DEPARTMENT OF JUSTICE**

Lodging of Consent Decree; Master Metals Inc.

In accordance with Departmental policy, notice is hereby given that on November 14, 1989, a proposed Consent Decree in United States v. Master Metals Inc., Civil Action No. C87-1471, was lodged with the United States District Court for the Northern District of Ohio. The proposed Consent Decree requires defendant to close the waste piles and certain other areas at its facility in Cleveland, Ohio, in compliance with an approved closure plan, to comply with interim status regulations under the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., and to pay a civil penalty of \$20,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division. Environmental Enforcement Section, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to United States v. Master Metals Inc., D.J. reference 90-

The proposed Consent Decree may be examined at the office of the United States Attorney, Northern District of Ohio, 1404 East Ninth Street, Suite 500, Cleveland, Ohio 44114-1748, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section,

Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$2.00, for reproduction costs, payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

IFR Doc. 89-28081 Filed 11-29-89: 8:45 aml BILLING CODE 4410-01-M

#### **Antitrust Division**

National Cooperative Research Act of 1984; Catalytic Converter **Development Project for Control of Heavy-Duty Diesel Particulate Emissions** 

Notice is hereby given that, on November 3, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Engine Manufacturers Association ("EMA") and the Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Catalytic Converter Development Project for Control of Heavy-Duty Diesel Particulate Emissions." The notification discloses (1) the identities of the parties to the project and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below:

The parties to the project are EMA, on behalf of itself and its members, and SwRI. EMA is an Illinois not-for-profit corporation with its principal place of business at One Illinois Center, 111 East Wacker Drive, Chicago, Illinois 60601. SwRI is a Texas nonprofit corporation with its principal place of business at 6220 Culebra Road, San Antonio, Texas 78284.

EMA's current members are: **Briggs & Stratton Corporation** Catepillar Inc. **Cummins Engine Company** Deere & Company **Detroit Diesel Corporation** Deutz Corporation Ford New Holland, Inc. Hercules Engines, Inc. Isuzu Motors Corporation Iveco Trucks of North America Kohler Company

Lister-Petter, Inc.
Mack Trucks, Inc.
Mercedes-Benz Truck Company
Mitsubishi Motors America, Inc.
Navistar International Transportation
Corporation

Corporation
Onan Corporation
Saab-Scania AB
Teledyne Total Power
Volvo GM Heavy Truck Corporation
Waukesha Engine Division

With the exception of Briggs &
Stratton Corporation, Deere & Company,
Deutz Corporation, Kohler Company,
Lister-Petter, Inc., Onan Corporation,
Teledyne Total Power and Waukesha
Engine Division, all current EMA
members are participants in the project.

The purpose of the project is to conduct research, inquiries, investigations and studies relating to the development and evaluation of a prototype flow-through catalytic converter system suitable for use on heavy-duty diesel engines for the control of particulate emissions. The primary objective of the project is to provide evidence that such a system is capable of attaining the 1994 model year design targets for complying with the 0.10 g/ bhp-hr particulate standard mandated by the U.S. Enviornmental Protection Agency as well as the emission standards mandated for HC, Co and NOx. The system also must be viable for high-volume production and demonstrate adequate in-use durability for at least 150,000 miles with minimal maintenance requirements.

SwRI is responsible for the solicitation and selection of product suppliers to provide hardware necessary for its research and development efforts. The intellectual property rights arising from the technology developed by SwRI during the course of the project will be perfected by EMA on behalf of EMA, its participating members and its designees. EMA further anticipates disclosure of any technology developed during the course of the project to non-EMA members in exchange for a reasonable

Joseph H. Widmar,

Director of Operations, Antitrust Division. [FR Doc. 89–28082 Filed 11–29–89; 8:45 am] BILLING CODE 4410–01-M

#### National Cooperative Research Act of 1984; Development of a Computer-Aided Armor Design/Analysis System Southwest Research Institute

Notice is hereby given that, on November 1, 1989, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Southwest Research

Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of a party to its group research project regarding "The Development of a Computer-Aided Armor Design/ Analysis System." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the SwRI advised that NEDERLANDSE ORGANISATIE VOOR TOEGEPAST-NATUURWETENSCHAPPELIJK ONDERZOEK TNO (Netherlands Organization for Applied Scientific Research) (effective September 11, 1989) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project.

On June 26, 1989, SwRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on July 20, 1989, 54 FR 30481. On August 7, 1989, SwRI filed an additional written notification. The Department published a notice in the Federal Register in response to the additional notification on August 31, 1989, 54 FR 36066.

Joseph H. Widmar,

Director of Operations, Antitrust Division. [FR Doc. 89–28083 Filed 11–29–89; 8:45 am] BILLING CODE 4410–01-M

#### NUCLEAR REGULATORY COMMISSION

Arkansas Power & Light Co.,

#### Arkansas Nuclear One, Unit Nos. 1 and 2; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory
Commission (the Commission) is
considering issuance of an amendment
to Facility Operating License Nos. DPR51 and NPF-6 issued to Arkansas Power
and Light Company (AP&L, the licensee)
for operation of the Arkansas Nuclear
One, Unit Nos. 1 and 2 (ANO-1&2)
located in Pope County, Arkansas.

#### **Environmental Assessment**

Identification of Proposed Action

The proposed amendment would change license conditions to allow the operation and maintenance of ANO-1&2 by Entergy Operations, Inc.

The proposed action is in accordance with the licensee's application for amendment dated August 15, 1989.

The Need for the Proposed Action

The licensee, AP&L, proposes to transfer the operation and maintenance of ANO-1&2 to Entergy Operations, Inc. The proposed license conditions will assure that AP&L will continue in its present capacity as owner of ANO-1&2. The transfer to Entergy Operations, Inc. entails the transfer of ANO-1&2 operating and support staff from Arkansas Power and Light Company to Entergy Operations, Inc. All staff and functions for safety, environmental, security, emergency planning, and related disciplines will continue after the amendment as before. There will be no physical or operation changes associated with this amendment other than the change in name only (to Entergy Operations, Inc.) of the operations, maintenance, engineering, and other nuclear related personnel.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the licensing conditions. The proposed changes would allow AP&L to transfer the operations and maintenance of ANO-1&2 to Entergy Operations, Inc. The operation and maintenance staff of AP&L associated with ANO-1&2 will transfer to Entergy Operations, Inc. There will be no changes to the facility or the environment as a result of the license amendment. The licensee (AP&L) will continue as owner of the facility. Accordingly, the Commission concludes that this action would result in no radiological or non-radiological environmental impact.

The Notice of Consideration of Issuance of Amendment to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the Federal Register on September 6, 1989 (54 FR 37041). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

#### Alternative Use of Resources

The action does not involve the use of resources beyond the scope of resources used during normal operation discussed in the Final Environmental Statement (FES) related to the operation of Arkansas Nuclear One, Unit 1 issued in February 1983 and in the FES related to the operation of Arkansas Nuclear One, Unit 2 issued in June 1977.

#### Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for amendment dated August 15, 1989. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Tomlinson Library. Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 27th day of November 1989.

For the Nuclear Regulatory Commission. Frederick J. Hebdon,

Director, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28038 Filed 11-29-89; 8:45 am]

#### [Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory
Commission (the Commission) is
considering issuance of an amendment
to Facility Operating License No. DPR58 and DPR-74, issued to Indiana
Michigan Power Company (the
licensee), for operation of the Donald C.
Cook Units Nos. 1 and 2 located in
Berrien County, Michigan.

The amendment would revise the Technical Specifications by adding requirements on the fire-unaffected Unit to support the alternate safe shutdown or emergency remote shutdown of the opposite fire-affected Unit. The changes are necessary to meet the requirements of 10 CFR part 50, appendix R. In addition, a change is proposed to the Bases which clarifies that fire watches

would not be implemented in areas protected by carbon dioxide fire suppression systems during testing of the systems which may result in carbon dioxide discharge, or after the discharge of a system, when carbon dioxide levels may represent a personnel hazard.

Finally, the licensee proposed a change that involves removing the wide range hot-leg and cold-leg temperature indications of RCS loops 1 and 3 from the local shutdown indication (LSI) panels. The wide range hot-leg and cold-leg temperature indications of reactor coolant system loops 2 and 4 would still be supplied to the LSI panels. This change is necessary in order to meet the Category 1 redundancy criteria of Regulatory Guide 1.97, Revision 3 for the reactor vessel level indication system (RVLIS).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In their submittal, the licensee provided the following statements with regard to the criteria of 10 CFR 50.92:

#### Criterion 1

The proposed TS changes require that some plant systems be available to support shutdown of the opposite unit in accordance with Appendix R. In addition, we have added requirements for various Appendix R remote shutdown monitoring instrumentation. Since these TS place additional requirements on various plant equipment to ensure an alternative method of shutting down during a fire scenario, we believe this change will not involve a significant increase in the probability or consequences of a previously analyzed accident.

#### Criterion 2

The proposed TS changes assure that safe shutdown systems are available without placing the plant in a configuration inconsistent with the design basis. In addition, the proposed changes add requirements that certain safety systems be available that are not currently required. For this reason, we believe that the proposed TS changes do not create the possibility of a new

or different kind of accident from any accident previously evaluated.

#### Criterion 3

The proposed TS changes introduce new CVCS cross-tie valves into the plant, and thus introduce additional risk of error or failure. However, the operation and surveillance procedures associated with these valves are similar to those for other safety-related systems. As noted in Criterion 1, these changes impose additional requirements on various plant equipment to ensure an alternate method of shutting down during a fire scenario. For this reason, we believe the proposed changes do not constitute a significant reduction in the margin of safety.

Lastly, we note that the Commission has provided guidance concerning the determination of significant hazards by providing certain examples (51 FR 7751) of amendments considered not likely to involve significant hazards considerations. The second of these examples refers to changes that impose additional limitations, restrictions, or controls not presently included in the TS. The changes proposed in this letter are for the type cited in this example. Therefore, we believe these changes do not involve a significant hazards consideration as defined by 10 CFR 50.92.

The staff has reviewed the licensee's submittals and agrees with the licensee's no significant hazards determination.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing. Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 2, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local Public Document Room located at Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or retition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interests in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner

shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license

amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given **Datagram Identification Number 3737** and the following message addressed to John O. Thoma: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N. Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 16, 1988 and Revised January 23, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, located at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 21st day of November 1989.

For the Nuclear Regulatory Commission. Joseph G. Giitter,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 89-28039 Filed 11-29-89; 8:45 am]

#### Louisiana Power & Light Co., Waterford Steam Electric Station Unit No. 3; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory
Commission (the Commission) is
considering issuance of an amendment
to Facility Operating License No. NPF—
38 issued to Louisiana Power and Light
Company (LP&L, the licensee) for
operation of the Waterford Steam
Electric Station, Unit No. 3 located in St.
Charles Parish, Louisiana.

#### **Environmental Assessment**

#### Identification of Proposed Action

The proposed amendment would change license conditions to allow the operation and maintenance of Waterford 3 by Entergy Operations, Inc.

The proposed action is in accordance with the licensee's application for amendment dated August 15, 1989.

#### The Need for the Proposed Action

The licensee, LP&L, proposes to transfer the operation and maintenance of Waterford 3 to Entergy Operations, Inc. The proposed license conditions will assure that LP&L will continue in its present capacity as owner of Waterford The transfer to Entergy Operations, Inc. entails the transfer of Waterford 3 operating and support staff from Louisiana Power and Light Company to Entergy Operations, Inc. All staff and functions for safety, environmental, security, emergency planning, and related disciplines will continue after the amendment as before. There will be no physical or operation changes associated with this amendment other than the change in name only (to Entergy Operations, Inc.) of the operations, maintenance, engineering, and other nuclear related personnel.

#### Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the licensing conditions. The proposed changes would allow LP&L to transfer the operations and maintenance of Waterford 3 to Entergy Operations, Inc. The operation and maintenance staff of

LP&L associated with Waterford 3 will transfer to Entergy Operations, Inc.
There will be no changes to the facility or the environment as a result of the license amendment. The licensee (LP&L) will continue as owner of the facility. Accordingly, the Commission concludes that this action would result in no radiological or non-radiological environmental impact.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the Federal Register on September 6, 1989 (54 FR 37047). No request for hearing or petition for leave to intervene was filed following this notice.

#### Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

#### Alternative Use of Resources

This action does not involve the use of resources beyond the scope of resources used during normal operation discussed in the Final Environmental Statement related to the operation of Waterford Steam Electric Station, Unit No. 3 issued in September 1981.

#### Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for amendment dated August 15, 1989. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Dated at Rockville, Maryland this 27th day of November 1989.

#### For the Nuclear Regulatory Commission. Frederick J. Hebdon,

Director, Project Directorate IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28040 Filed 11-29-89; 8:45 am] BILLING CODE 7590-01-M

#### [Docket No. 50-416]

#### System Energy Resources, Inc., et al; Grand Gulf Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory
Commission (the Commission) is
considering issuance of an amendment
to Facility Operating License No. NPF29 issued to System Energy Resources,
Inc., (SERI or the licensee) acting for
itself and as agent for South Mississippi
Electric Power Association (SMEPA),
and Mississippi Power and Light
Company, for operation of the Grand
Gulf Nuclear Station, Unit 1, (Grand
Gulf 1) located in Claiborne County,
Mississippi.

#### **Environmental Assessment**

#### Identification of Proposed Action

The proposed amendment would change license conditions and Technical Specifications (TS) to allow the operation and management of Grand Gulf 1 by Entergy Operations, Inc.

The proposed action is in accordance with the licensee's application for amendment dated August 15, 1989, as revised August 22, 1989.

#### The Need for the Proposed Action

The licensee proposes to transfer the operation and management responsibility of Grand Gulf 1 to Entergy Operations, Inc. The proposed license conditions and TS will assure that SERI and SMEPA will continue in their present capacity as owners of Grand Gulf 1. The transfer to Entergy Operations, Inc. entails the transfer of Grand Gulf 1 operating and support staff from SERI to Entergy Operations, Inc. All staff and functions for safety, environmental, security, emergency planning, and related disciplines will continue after the amendment as before. There will be no physical or operation changes associated with this amendment other than the change in name only (to Entergy Operations, Inc.) of the operations, maintenance, engineering, and other nuclear related personnel.

## Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the license conditions and TS. The proposed changes would allow SERI to transfer the operation and management responsibilities of Grand Gulf 1 to Entergy Operations, Inc. The operation and management staff of SERI associated with Grand Gulf 1 will

transfer to Entergy Operations, Inc.
There will be no changes to the facility or the environment as a result of the license amendment. SERI and SMEPA will continue as owners of the facility. Accordingly, the Commission concludes that this action would result in no radiological or non-radiological environmental impact.

The Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the Federal Register on September 6, 1989 (54 FR 37047). No request for hearing or petition for leave to intervene was filed following this notice.

#### Alternative to the Proposed Action

It has been determined that there is no impact associated with the proposed amendment; any alternatives to the amendment will have either no environmental impact or greater environmental impact.

#### Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Grand Gulf Nuclear Station, Units 1 and 2," dated September 1981.

#### Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the request for amendment dated August 15, 1989. Copies of the request for amendment are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland this 27th day of November 1989.

For the Nuclear Regulatory Commission. Elinor G. Adensam,

Director, Project Directorate II/I, Division of Reactor Projects I/II, Office of Nuclear

[FR Doc. 89-28041 Filed 11-29-89; 8:45 am]

Reactor Regulation.

#### Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittees and meetings of the ACRS full Committee, and of the Advisory Committee on Nuclear Waste (ACNW), the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published October 18, 1989 (54 FR 42873). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the Federal Register approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (\*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 1989 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 301/492-7288, ATTN: Barbara Io White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

#### **ACRS Subcommittee Meetings**

Human Factors, December 6, 1989 (tentative), Bethesda, MD. The Subcommittee will discuss: (1) Proposed changes to 10 CFR part 55, Operator Licenses, (2) NRC staff response to INPO comments on performance indicators, (3) a letter from R. Stater (public) to R. Fraley, ACRS concerning operator training deficiencies, and (4) Access Authorization rule (tentative).

Thermal Hydraulic Phenomena,
December 7, 1989, Bethesda, MD. The
Subcommittee will discuss: (1) The
proposed NRR and RES programs for
resolution of the interfacing systems
LOCA issue; (2) the status of the NRC/
RES Technical Program Group's efforts
to apply the Code Scaling, Applicability,
and Uncertainty (CSAU) methodology to
calculation of the effects of a small-

break LOCA; and (3) the status of development of the Westinghouse bestestimate ECCS/LOCA model.

Containment Systems, December 12, 1989, Bethesda, MD. The Subcommittee will discuss the NRC staff's document on the Containment Performance Improvements (CPI) Program (all containment types other than the BWR Mark I).

Joint Containment Systems and Structural Engineering, December 13, 1989, Bethesda, MD. The Subcommittees will continue to discuss containment design criteria for future plants with invited speakers from industry and national laboratories.

Regulatory Policies and Practices,
January 10, 1990, Bethesda, MD. The
Subcommittee will review the approach
suggested by the NRC staff for license
renewal along with the staff's proposed
resolution of industry's comments on the
suggested approach obtained at the
November Workshop.

Joint Severe Accidents and Probabilistic Risk Assessment, January 23–24, 1990, Albuquerque, NM. The Subcommittees will continue their review of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," (Second Draft for Peer Review). Topics tentatively scheduled for discussion at this meeting include: back-end analysis, uncertainties and the expert opinion process.

Structural Engineering, January 24–25, 1990, Albuquerque, NM. The Subcommittee will review structural integrity issues on various containment configurations and Category I structures.

Safety Research Program, February 7.
1990, Bethesda, MD. The Subcommittee
will discuss the proposed NRC Safety
Research Program and Budget for FY
1991 and other related matters.

Occupational and Environmental Protection Systems, Date to be determined (December/January), Bethesda, MD. The Subcommittee will continue its review of Interim Standard for hot particles.

Systematic Assessment of Experience,
Date to be determined (December/
January), Bethesda, MD. The
Subcommittee will review the proposed
power level increase for Indian Point
Unit 2.

Advanced Pressurized Water
Reactors, Date to be determined
(January), Bethesda, MD. The
Subcommittee will discuss the licensing
review bases document being developed
for Combustion Engineering's Standard
Safety Analysis Report-Design
Certification (CESSAR-DC).

Decay Heat Removal Systems, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Joint Thermal Hydraulic Phenomena and Core Performance, Date to be determined (January/February), Bethesda, MD. The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

Materials and Metallurgy, Date to be determined (January/February), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Severe Accidents, Date to be determined (February/March), Bethesda, MD. The Subcommittee will discuss the NRC Severe Accident Research Program (SARP) plan.

Decay Heat Removal Systems, Date to be determined (June/July), Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Decay Heat Removal Systems, Date to be determined, Bethesda, MD. The Subcommittee will explore the issue of the use of feed and bleed for decay heat removal in PWRs.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of Industry best-estimate ECCS model submittals for use with the revised ECCS Rule.

Auxiliary and Secondary Systems,
Date to be determined, Bethesda, MD.
The Subcommittee will discuss the: (1)
criteria being used by utilities to design
Chilled Water Systems, (2) regulatory
requirements for Chilled Water Systems
design, and (3) criteria being used by the
NRC staff to review the Chilled Water
Systems design.

Reliability Assurance, Date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, Date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

Regulatory Policies and Practices, Date to be determined, Bethesda, MD. The Subcommittee will review the proposed staff program for the renewal of power plant licenses.

#### **ACRS Full Committee Meetings**

356th ACRS Meeting, December 14–16, 1989, Bethesda, MD—Items are tentatively scheduled.

\*A. Nuclear Power Plant Access Authorization (Open/Closed)—Review and report on proposed final rule on Personnel Access Authorization Requirements for Nuclear Power Plants (10 CFR 73.56).

\*B. Containment Performance Improvement Program (Open)—Review and report on proposed NRC program to improve containment performance during severe accident conditions for all containment types except Mark I containment.

\*C. Technical Training and Qualification Program for NRC Employees (Open) Briefing by NRC staff representatives regarding training courses at the NRC Technical Training Center at Chattanooga, TN.

\*D. Fitness for Duty (Open)—Review and report on proposed revision of 10 CFR part 55 to require operator compliance with NRC fitness-for-duty programs and conforming modification to the Commission's enforcement policy.

\*E. Meeting with NRC Commissioners (Open)—Meeting with NRC Commissioners to discuss items of mutual interest.

\*F. Meeting with Acting EDO (Open)—Discussion regarding lack of coherence in the NRC regulatory process.

\*G. Anticipated ACRS Activities (Open)—Discuss anticipated ACRS Subcommittee activities, topics proposed for consideration by the ACRS, proposed changes in ACRS Bylaws, and the ACRS/NRC staff Memorandum of Understanding.

\*H. Appointment of New Members (Open/Closed)—Discuss the status of appointment of candidates proposed for appointment to the Committee.

\*I. ACRS Subcommittee Activities (Open)—Hear and discuss reports of ACRS subcommittees regarding the status of assigned activities regarding safety-related matters, including the activities related to thermal hydraulic phenomena, etc.

\*J. Evaluation of Operational Data (Open)—Briefing and discussion regarding use of SALP ratings in the regulatory process and elsewhere.

357th ACRS Meeting January 11–13, 1990—Agenda to be announced.

358th ACRS Meeting, February 8-10, 1990—Agenda to be announced.

#### **ACNW Full Committee Meetings**

ACNW Working Group Meeting,
November 30, 1989, San Antonio, TX.
The purpose of the meeting will be to
review and discuss the projects
currently under way at the Center for
Nuclear Waste Regulatory Analyses and
those planned in the future.

15th ACNW Meeting, December 20, 1989, Bethesda, MD. The purpose of the meeting will be to review and discuss the NRC staff's reevaluation of the U.S. Environmental Protection Agency's high-level waste disposal standards development, prepare a report to the Nuclear Regulatory Commission on ACNW Activities for the upcoming four months, and the Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate.

16th ACNW Meeting, January 24–26, 1990—Agenda to be announced. 17th ACNW Meeting, February 21–23, 1990—Agenda to be announced.

Dated: November 24, 1989.

#### John C. Hoyle,

Advisory Committee Management Officer. [FR Doc. 89–28037 Filed 11–29–89; 8:45 am] BILLING CODE 7590–01-M

#### [Docket Nos. 50-315 and 50-316]

## Indiana Michigan Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory
Commission (Commission) has issued
Amendment No. 129 to Operating
License No. DPR-58 and Amendment
No. 114 to Operating License DPR-74
issued to Indiana Michigan Power
Company, which revised the Technical
Specifications for operations of the
Donald C. Cook Nuclear Plant located in
Berrien County, Michigan.

The amendment is effective as of the date of issuance.

The amendment revised the Technical Specification Sections to allow a portion of the Waste Gas System Explosive Monitoring System to be inoperable for up to 160 days to allow for its replacement.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set for in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on August 18, 1989 (54 FR 34267). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement (54 FR 47742) dated November 16, 1989. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated January 21, 1989, (2) Amendment Nos. 129 and 114 License Nos. DPR-58 and DPR-74 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., and at the Maude Preston Polenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects-III, IV, V and Special Projects.

Dated at Rockville, Maryland this 21st day of November 1989.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Project Manager, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-28042 Filed 11-29-89; 8:45 am] BILLING CODE 7590-01-M

#### PACIFIC NORTHWEST ELECTRIC FOWER AND CONSERVATION PLANNING COUNCIL

Final Wildlife Amendments; Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final wildlife amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. section 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The program has been amended from time to time since then.

On July 13, 1989 the Council voted to initiate proceedings pursuant to section 4(d)(1) of the Northwest Power Act to amend the program's wildlife measures. Appropriate notices of the proposed amendments were published in the Federal Register and distributed through the Council's mailing lists and newsletters. In September, public hearings were held in: Coeur d'Alene, Twin Falls, and Boise, Idaho; Kalispell, Montana: Portland, Oregon: and Seattle, Washington. Consultations were held with interested parties, and written comments were received through September 30, 1989.

At its October, 1989 Council meeting, the Council adopted certain amendments to the program. On November 9, 1989, the Council adopted final amendments, action plan amendments, and a response to comments. These amendments.

- Authorize the use of loss estimates as evidence of wildlife losses for an interim, 10-year mitigation program.
- Call for a review of the loss estimates by an independent party.
- Establish an interim goal of addressing 35% of total wildlife losses due to the federal hydropower dams over the next 10 years.
- Call for mitigation plans and proposals to be evaluated against certain standards.
- Set procedures for developing future mitigation plans with public involvement.
- Call for an advistory committee to recommend mitigation priorities to the Council.
- Call for the Bonneville Power Administration to fund implementation of wildlife mitigation plans.
- Establish guidelines for wildlife mitigation at nonfederal hydropower projects.

For copies of the final amendments, the response to comments, or for further information: Contact the Council's Public Involvement Division at 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon 97204 or (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and

Washington or 1-800-452-2324 in Oregon.

Edward Sheets,

Executive Director.

[FR Doc. 89-28044 Filed 11-29-89; 8:45 am]

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27459; File No. SR-Amex-89-25]

Self-Regulatory Organizations;
Proposed Rule Change by American
Stock Exchange, Inc. Relating to
Amendments to Article VIII, Section 2
(b) and (c) of the Exchange
Constitution Regarding the Availability
of Arbitration Before the American
Arbitration Association

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 30, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is proposing to amend Article VIII, section 2 (b) and (c) of the Exchange Constitution regarding the forums before which arbitration involving Exchange members may be conducted.

The text of the proposed rule change is as follows: [Additions italicized; deletions

bracketed] Arbitration Forum

Section 2. Arbitration shall be conducted under the arbitration procedures of this Exchange, except as follows:

(a) No change.

(b) [If all parties to the controversy are members, allied members, member firms or member corporations of the New York Stock Exchange.] any party to the controversy may elect to arbitrate under the arbitration procedures [of that Exchange] of any self-regulatory organization of which all parties to the controversy are members.

(c) If any of the parties to a controversy is a customer, the customer

may elect to arbitrate before the American Arbitration Association [in the city of New York], unless the customer has expressly agreed, in writing, to submit only to the arbitration procedures of [the Exchange.] securities industry self-regulatory organizations.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### (1) Purpose

The Exchange is proposing to clarify Article VIII, sections 2 (b) and (c) of the Exchange Constitution regarding the forums before which arbitration involving Exchange members may be conducted. Article VIII, section 2(c) deals with the ability of customers to elect arbitration before the American Arbitration Association ("AAA") as an alternative to Exchange arbitration. Specifically, the Amex provision reads as follows:

[If] any of the parties to a controversy is a customer, the customer may elect to arbitrate before the American Arbitration Association in the City of New York, unless the customer has expressly agreed, in writing, to submit only to the arbitration procedure of the Exchange.

The interpretive questions surrounding this provision have focused on two aspects of the wording: (1) Whether a customer electing to arbitrate before AAA is limited to bringing such proceedings only "in the City of New York," and (2) whether the customer can be deemed to have waived his or her right to arbitrate before AAA only in the event of an agreement to arbitrate exclusively pursuant to Amex procedures as opposed to an agreement to arbitrate in accordance with the procedures of any self-regulatory organization ("SRO"). Due to the confusion that has developed concerning the interpretation of these phrases, the Exchange is proposing to

clarify the language of Article VIII, section 29c). 1

The Exchange has interpreted the words "in the City of New York" as referring merely to the fact that the AAA is headquartered in New York City. This reference is not viewed by the Exchange as a venue-setting provision, nor as a limitation on the right to have an arbitration submitted to the AAA conducted in any of the various locations outside New York City where the AAA has regional offices or otherwise may choose to allow an arbitration to proceed. Once a matter is before the AAA, any questions regarding the administration of the proceeding, including the location of the hearing, should be resolved pursuant to the AAA's own rules and procedures. Any other interpretation would be inconsistent with the current practice of the Exchange and other SROs, which, depending on the circumstances of the particular case, is to permit arbitration proceedings commenced by customers to be conducted outside the city in which the SRO is located. Nevertheless, to clarify this aspect of section 2(c), it is proposed that the reference to the City of New York be deleted.

With respect to the provision that a customer may elect to arbitrate before the AAA unless the customer has agreed, in writing, to submit "only to the arbitation procedure of the Exchange," the Amex interprets this provision as referring to the arbitration procedures of any SRO having comparable requirements to those of the Exchange. Inasmuch as all SROs maintaining arbitration forums have now adopted the Uniform Code of Arbitration, there is no justification for distinguishing one SRO arbitration facility from another. To interpret this language as applying only to the Amex (i.e., to give credence only to rules in place at the Amex and not to essentially identical rules in place at other SROs) would be not only illogical, but contrary to the longestablished goal of the Securities Industry Conference on Arbitration ("SICA"), as well as of the Commission: to develop and support uniformity among securities industry arbitration forums. Thus, to clarify this aspect of section 29(c), it is being proposed that the phrase in question be amended to refer specifically to all SROs.

Article VIII, section 2(b) of the Constitution, which applies to member versus member disputes, provides that if all parties to a controversy are members of the New York Stock Exchange ("NYSE"), any party may choose to

arbitrate under the NYSE's arbitration procedures. This language has been interpreted to include any SRO having comparable rules; thus, for instance, if all parties are members of the National Association of Securities Dealers ("NASD"), the arbitration may be conducted pursuant to the NASD's arbitration procedures. To make this clear, it is being proposed that the provision be amended to provide that any party to a controversy may elect to arbitrate under the arbitration procedures of any SRO of which all parties to the controversy are members.

#### (2) Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act which is designed to protect investors and the public interest by clarifying the meaning of Exchange Constitutional provisions and to facilitate the administration of an impartial forum for the resolution of disputes relating to the securities industry.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

<sup>&</sup>lt;sup>1</sup> See Paine Webber Inc. v. Pitchford, 1989 Fed. Sec. L. Rep. (CCH) ¶ (SD N.Y. Sept. 14, 1989).

the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-89-25 and should be submitted by December 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1989.

Shirley B. Hollis,

Assistant Secretary.

[FR Doc. 89-28092 Filed 11-29-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-27458; File No. SR-CSE-89-5]

#### Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Designated Dealer Net Capital

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 7, 1989, the Cincinnati Stock Exchange ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE has submitted a rule filing proposing to amend Rule 11.9 of chapter XI of the Exchange's Rules of the Board of Trustees to increase the net capital requirement of Designated Dealers.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of

these statements may be examined at the places specified in Item IV below and is set forth in sections A, B and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Exchange Rule 11.9 currently requires a Designated Dealer <sup>1</sup> to maintain a minimum net capital <sup>2</sup> of \$50,000 or the amount required under Rule 15c3–1 of the Act. The proposed amendment would increase this minimum net capital requirement for Designated Dealers to \$100,000.

The primary purpose of the net capital rule is to protect customers and creditors of registered broker-dealers from monetary losses and delays that can occur when a registered broker-dealer fails. To this end, the increase is intended to satisfy concerns that broker-dealers have adequate capital and resources to enable Designated Dealers to meet their affirmative obligations during volatile markets and assure that the securities markets function smoothly and efficiently.

The statutory basis for the proposed rule change is section 6(b)(5) of the Act in that it is designed to protect investors and the public interest and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commissioin may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Intersted persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-89-5 and should be submitted by December 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 21, 1989

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-28093 Filed 11-29-89; 8:45 am]

[Release No. 34-27469; File No. SR-MSRB-89-10]

#### Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to the Executive and Administrative Staff of the Board

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

<sup>&</sup>lt;sup>1</sup> A Designated Dealer is a Proprietary Member of the Exchange who has been approved to perform market functions by entering bids and offers for Designated Issues into the National Securities Trading System. Exchange Rule 11.9.

<sup>\*</sup> See Securities Exchange Act Rule 15c3-1(c)(2); 17 CFR 240.15c3-1(c)(2) (1989).

<sup>3 17</sup> CFR 240.15c3-1 (1989).

solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing an amendment to Board rule A-5 on the executive and administrative staff of the Board.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) At a recent meeting of the Board, the Board restated the duties and responsibilities of the Executive Director. The proposed rule change reflects the Board's view regarding the organization of the executive and administrative staff by stating that the Board determines the duties and responsibilities of the Executive Director and the Executive Director determines the duties and responsibilities of all other staff members.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(I) of the Securities Exchange Act of 1934, as amended (the "Act"). Section 15B(b)(2)(I) authorizes and directs the Board to adopt rules providing for the operation and administration of the Board.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change is concerned solely with the operation of the Board and does not affect the conduct of business by any broker, dealer, or municipal securities dealer. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board neither solicited nor received comments on the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange

Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the abovementioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 21, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 22, 1989.

Shirley R. Hollis,

Assistant Secretary.

[FR Doc. 89-28094 Filed 11-29-89; 8:45 am]

[Release No. 34-27453; File No. MSRB-89-06]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board, Inc., Relating to Professional Qualifications

On August 28, 1989, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), a proposed rule change amending the Board's rule on professional qualifications by

eliminating the Board's Financial and Operations Principal ("FINOP") Examination and, instead, requiring FINOP candidates to qualify through the National Association of Securities Dealers' ("NASD") FINOP Examination. The Board requested that the Commission delay the effectiveness of the proposed rule change until January 1, 1990, to allow FINOP candidates to have sufficient time to prepare for the NASD's FINOP examination. The Commission published notice of the proposed rule change on October 10, 1989 in Securities Exchange Act Release No. 27349, 54 FR 42874. No comments were received on the proposal.

Rule G-3 on professional qualifications requires securities firms that engage in municipal securities transactions to have at least one associated person qualified as a FINOP. A FINOP supervises the financial reporting and net capital compliance required by SEC rules and the processing, clearance and safekeeping of municipal securities by the securities firm.

Under current Board Rule G-3(d), an individual may qualify as a FINOP by passing either the Board's Financial and Operations Principal Qualification Examination (Test Series 54) or by being qualified as a FINOP by the NASD. The NASD qualifies FINOPs through its FINOP Examination (Test Series 27). The Board stated that its FINOP examination has been a three-hour "paper and pencil" examination with 66 multiple choice questions and additional arithmetical problems which test the candidate's ability to perform net capital and reserve formula computations on municipal securities. Developed by the Board in 1978 and administered by the NASD, the Board's FINOP examination is designed to test a candidate's knowledge of applicable Board and SEC rules and statutory provisions pertaining to financial responsibility and recordkeeping as well as the protections afforded investors under the Securities Investor Protection Act of 1970. The FINOP examination used by the NASD qualifies candidates to supervise the financial and operations activities of firms handling municipal and corporate securities and includes questions on financial responsibility rules, SEC recordkeeping rules and NASD uniform practice rules. In addition, this examination tests a candidate's knowledge of the Board's recordkeeping and uniform practice requirements.

When the Board's FINOP examination was developed in 1978, FINOPs from all

previously unregistered municipal dealers were required to take either the Board's or the NASD's FINOP examination. The Board stated that most candidates took the Board's FINOP examination because, at the time, there were significant differences in the net capital treatment of municipal securities under SEC rules. Since then, however, fewer and fewer candidates satisfy their examination requirement by taking the Board's FINOP examination. The Board believes that this may be because there are fewer muncipal securities-only firms qualifying FINOPs, there are fewer differences in the treatment of municipal securities and other securities in the SEC's net capital rule, or because municipal securities-only firms, like most general securities firms, prefer that their FINOP candidates qualify under the NASD's more comprehensive examination. Because so few Board FINOP examination are given, the Board has determined to eliminate it.

The NASD is currently revising the test specifications of its FINOP examination. These revised specifications will include, among other things, a section devoted exclusively to questions on Board rules, including Rules G-8 and G-9 on recordkeeping, Rules G-12 and G-15 on uniform practice, deliveries to customers and automated clearance and settlement, and Rule G-27 on supervision. Also, the Board and the NASD are in the process of reaching an agreement that the questions contained in the NASD's FINOP examination regarding Board rules will be provided or reviewed by the Board.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Board and, in particular, Section 15B(b)(2)(A) of the Act in that it protects investors and the public interest by maintaining standards of training, experience and competence for municipal securities dealers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: November 17, 1989. Shirley E. Hollis, Assistant Secretary.

[FR Doc. 89-28095 Filed 11-29-89; 8:45 am]

[Release No. 34-27184; File No. SR-NYSE-89-14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Minimum Hait Period for Equipment Changeover Trading Halts

On June 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to Securities and Exchange Commission (Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to revise the Exchange's policy on the minimum time period for a trading halt involving an "equipment changeover" condition.

changeover" condition.

The proposed rule change was noticed in Securities Exchange Act Release No. 26965 (June 23, 1989), 54 FR 28138 (July 5, 1989). No comments were received on

the proposed rule change.

In its filing, the Exchange proposes to reduce the minimum period for the duration of a trading halt involving an equipment changeover condition from fifteen to five minutes. The proposed rule change also provides that if, during an Equipment Changeover trading halt in the stock, a significant order imbalance develops or a regulatory condition occurs (i.e., news pending or news dissemination), then the nature of the halt condition would be changed accordingly and notice of such change would be disseminated. The minimum halt period prior to the resumption of trading in this case would be fifteen minutes following the first indication after the new halt condition is disseminated.

Present Exchange policy does not take into consideration the difference in rationale between an Equipment Changeover and other halt conditions in that regardless of the nature of the halt condition, a price indication must be disseminated before trading can be resumed, and trading may not be resumed for at least fifteen minutes from the time on the first indication. In many cases, a systems, equipment or other technical problem may be corrected in a much shorter period of time, and it may be possible to resume trading at a price which is a reasonable variation from the last sale in the stock prior to the halt. Therefore, the Exchange proposes to reduce the minimum halt period from fifteen to five minutes for an Equipment Changeover condition. Of course, if the systems, equipment or technical problem took longer to resolve, then the

halt would continue until corrective action is completed.3

The proposed rule change recognizes the possibility that during an Equipment Changeover halt, a significant order imbalance may develop or a "news pending" or "news dissemination" regulatory condition may occur. In such a case, the proposed rule change would require the nature of the halt condition to be changed accordingly, and that notice of such change be disseminated. Thereafter, the standard policies relating to order imbalance or regulatory halts would apply. The minimum halt period prior to the resumption of trading in this case would be fifteen minutes following the first indication after the new halt condition is disseminated. This would provide market participants the normal time period to evaluate and react to news of a corporate event or a significant order imbalance.

Finally, the proposed rule change defines a "significant order imbalance" as one which would result in a price change of the lesser of 10% or three points (five points if the last sale was \$100 or more) unless the price change is less than one point. This is the same standard that applies to mandatory indications on openings, under existing

Exchange policies.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of section 6(b)(5) of the Act.4 The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of a national securities exchange be designed to "remove impediments to and perfect the mechanism of a free and open market \* \* \* and to protect investors and the public interest \* The proposal will shorten the time period for an equipment changeover trading halt, thereby reopening a security for trading in a more expeditious fashion. The Commission agrees that an equipment changeover trading halt need not be as long as a regulatory trading halt due to the technical, non-market aspect of the equipment changeover halt. Thus, the NYSE proposal will permit a stock in these conditions to reopen sooner for public trading. At the same time, the NYSE's proposal recognizes that an equipment changeover halt may develop

<sup>1 15</sup> U.S.C. 78s(b)(1)(1982).

<sup>2 17</sup> CFR 240.19b-4 (1988).

<sup>&</sup>lt;sup>3</sup> In all other respects, existing policies relating to non-regulatory halts would apply to an Equipment Changeover halt.

<sup>4 15</sup> U.S.C. 87f (1982).

into a regulatory halt due to a "news pending" or buy or sell imbalance in the stock, and ensures that in these conditions such a halt would be treated accordingly. Finally, the other rules proposed by the NYSE regarding the Equipment Changeover halt are reasonably designed to ensure fair and orderly markets upon resumption of trading after the halt.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>5</sup> that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 23, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-28096 Filed 11-29-89; 8:45 am]

[Release No. 34-27467; File No. SR-NYSE-89-36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Changes in the Electronic Access Membership Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to institute a new Electronic Access Membership fee in order to reduce the cost of an Electronic Access Membership. The proposed new fee for 1990 will be \$63,642 instead of the current amount of \$77,000.1

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to adjust the Electronic Access Membership fee <sup>2</sup> in order to accurately reflect the current market conditions, thereby creating a more equitable cost level for an Electronic Access Membership.<sup>3</sup>

The statutory basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Therefore, under the previous method, the 1990 Electronic Access Membership fee would equal \$70,738. (See File No. SR-NYSE-89-37, submitted to the Commission on November 13, 1989.)

<sup>2</sup> Article X, section 1(c) of the Exchange Constitution provides that "[t]he membership fee payable by an electronic access member, exclusive of fines and of such other charges as may be imposed pursuant to this Constitution, shall be fixed by the Board from time to time, and shall be not less than \$13,500 annually."

\*The costs for alternative forms of access, such as the purchase of equity seats, or the fixing of lease rentals, are determined by market conditions in negotiations between the purchaser and seller or lessor and lessee. The dues charges by the Exchange to physical access members are measured largely by the average of the annual rentals payable under bona fide leases, and are thus also affected by market conditions. Therefore, the proposed change to reduce the Electronic Access Membership fee is intended to result in a closer correlation of Electronic Access Membership prices with current market conditions.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were solicited or received regarding this proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-36 and should be submitted by December 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 89-28097 Filed 11-29-89; 8:45 am]

<sup>\* 15</sup> U.S.C. 78s(b)(2) (1982).

<sup>6 17</sup> CFR 200.30-3(a)(2) (1988).

¹ The reduced Electronic Access Membership fee of \$83,642 is the result of a NYSE proposed change which implements a new calculation method, conducted quarterly, which is based on 70% of the 8-month average (April-September 1989, excluding initiation fees and dues) of the Physical Access Membership fee. Previously, the calculation method was based on 70% of the prior 12 month average (December-November, including initiation fees and dues) of the Physical Access Membership fee.

[Rel. No. 34-27468; Filed No. SR-NYSE-89-37]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Changes in the Method of Calculating Electronic Access Membership Fees

Pursuant to section 19[b](1] of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 13, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to institute a new method for calculating Electronic Access Membership fees. <sup>1</sup> The resulting proposed new rate for 1990, which will be adjusted quarterly, is a function of the Physical Access Membership fees. <sup>2</sup> Each new quarterly rate will be an annual charge to any new or renewing Electronic Access Member approved during that quarter.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to adjust the Electronic Access Membership cost of more accurately reflect current market conditions, thereby creating a more equitable cost level.

Costs for alternative forms of access, such as the purchase of equity seats, or the fixing of lease rentals, are determined by market conditions in negotiations between purchaser and seller of lessor and lessee. The dues charged by the Exchange to Physical Access Members are measured largely by the average of the annual rentals payable under bona fide leases, and are thus also affected by market conditions.

Consequently, it is necessary that Electronic Access Memberships be more realistically priced to reflect the market conditions as evidenced by the changes in seat prices and annual lease rentals.

The statutory basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be approved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-89-37 and should be submitted by December 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 22, 1989.

Shirley E. Hellis,

Assistant Secretary.

[FR Doc. 89-28098 Filed 11-29-89; 8:45 am]

[Release No 34-27466; File No SR-PSE-89-23]

#### Self-Regulatory Organization; Pacific Stock Exchange, Inc., Order Approving Proposed Rule Change Relating to Board of Governor Liability

On September 18, 1989, the Pacific Stock Exchange ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"). pursant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 1 and Rule 19b-4 thereunder,2 a proposed rule change to amend the Ninth Article of the Certificate of Incorporation to allow for an exemption from monetary damages for breach of fiduciary duty by a Governor to the Exchange. Additionally, the proposed rule change would amend Rule XXIII of the Rules of the Board of Governors in order to limit the exemption from monetary damages to those situations not involving a violation of federal securities laws.

<sup>&</sup>lt;sup>1</sup> See Article X. Section 1(c) of the Exchange Constitution.

<sup>\*</sup> The current method of calculation, done annually, bases the Electronic Access Membership-fee on 70% of the prior 12 month sverage (e.g. December-November), including initiation fees and dues, of the Physical Access Membership Fees. Therefore, using the current method, the 1990 fee would equal \$70,736. The proposed fee calculation is done quarterly and is based on 70% of the 6 month average (e.g. April-September) excluding initiation fees and dues, of Physical Access Membership. Therefore, utilizing the proposed calculation method, the 1990 fee would equal \$63,642 for January-March of 1990.

<sup>1 15</sup> U.S.C. 78s(b)(1) (1982).

<sup>2 17</sup> CFR 240.19 b-4 (1989).

The proposed rule change was noticed in Securities Exchange Act Release No. 27339 (October 4, 1989), 54 FR 42128 (October 13, 1989). No comments were received on the proposal.

The proposed rule change was noticed in Securities Exchange Act Release No. 27339 (October 4, 1989), 54 FR 42128 (October 13, 1989). No comments were

received on the proposal.

The proposed rule change would amend the Ninth Article of the Exchange's Certificate of Incorporation, which applies to indemnification from liability for members of the Exchange's Board of Governors and members of committees of the Exchange, as well as for officers, agents, and employees of the PSE, and would add new Rule XXIII to the Rules of the Board of Governors. The proposed amendment to the Certificate of Incorporation would exempt the members of the Board of Governors, to the fullest extent permitted by Delaware law, from liability from monetary damages for breach of fiduciary duty.

Additionally, the proposed change to the Rules of the Board of Governors would limit the applicability of the proposed rule change to the Certificate of Incorporation by excluding from the proposed liability exemption those cases where the liability arose, directly or indirectly, as a result of a violation of

federal securities laws.

Because the PSE is incorporated in the state of Delaware, the Exchange based the proposed amendment to the Certificate of Incorporation on a 1986 amendment to section 102(b)(7) of the Delaware Corporations Code. 3 Under that provision, as amended, corporations incorporated under the laws of Delaware are permitted to include in their certificate of incorporation a provision limiting or eliminating the personal liability of a director to the corporation or its shareholders for monetary damages for breach of his or her fiduciary duty as a director. The Delaware statute does not permit the limitation or elimination of a director's liability under the following circumstances: a breach of the director's duty of loyalty to the corporation or its stockholders; acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; or any transaction from which the director derived an improper personal benefit. Moreover, the Delaware statute does not permit the adoption of any provision that would eliminate or limit the liability of a director for any act or omission

occurring prior to the date when such provision becomes effective.

The Delaware statute does not eliminate a director's fiduciary duty but rather prevents the imposition of monetary damages in the event of a breach of that duty. Other legal remedies for breach of fiduciary duty, such as recision and injunction, remain available under the Delaware provision. In addition, in response to a request from the Commission, the PSE has proposed new Rule XXIII, which would exclude violations of the federal securities laws from the liability limitation.

The Commission believes that the proposed rule change is consistent with the requirements of the Act and, accordingly, has determined that it should be approved. In reaching this determination, the Commission has considered the potential impact that the proposed rule change, if approved, would have on the special role and responsibilities of the Board of Governors of a registered national securities exchange under the Act. The Board of Governors of a national securities exchange has a crucial role in insuring that the exchange meets its responsibilities as a self-regulatory organization under the Act. In view of this, the PSE's proposal was limited so that the exemption from monetary damages would not be available where liability was based, directly or indirectly, on a violation of the Federal securities laws.

At the same time, the Commission recognizes that national securities exchanges, such as the PSE, are incorporated under State law and, as such, are generally entitled to take advantage of provisions under State corporation codes to the extent they are consistent with the Federal securities laws. The proposed rule change

adequately balances the need to retain the special responsibilities of directors of national securities exchanges with the desire of the Exchange to adopt State law provisions pertaining to its corporate structure. The rule change allows the Exchange to take advantage of section 102(b)(7) of the Delaware Corporations Code as would any other organization incorporated in Delaware, except where the imposition of monetary actions involves a violation of the Federal securities laws. Accordingly, Governors of the PSE would still be subject to the full panoply of damages in actions involving violations of the Federal securities laws.5

For the reasons discussed in detail above, the Commission believes the proposed amendment to the PSE's Certificate of Incorporation and proposed new Rule XXIII are consistent with the requirements of the Act, and, in particular, with the requirements of section 6 and section 19(g) of the Act. 6

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, <sup>7</sup> that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.8

Dated: November 22, 1989.

Shirley B. Hollis,

Assistant Secretary.

[FR Doc. 89–28099 Filed 11–29–89; 8:45 am]

BILLING CODE 8010–01–M

#### SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 6749; Amdt. 1]

#### Alaska, Declaration of Disaster Loan Area

The City and Borough of Juneau and the Unincorporated Borough and the contiguous Boroughs of Haines, Ketchikan Gateway, and the City and Borough of Sitka the State of Alaska, constitute an Economic Injury Disaster

<sup>&</sup>lt;sup>3</sup> Del. Code Ann., Tit. 8, section 102(b)(7) (1988).

<sup>\*</sup>The powers and responsibilities of the PSE's Board of Governors are set out in the Exchange's Constitution. Under Section 1(a), the government of the Exchange is vested in the Board of Governors. Section 1(d) provides that the Board is vested with and may exercise all powers of the Exchange and may perform all lawful acts which are not required to be performed by the members. This includes the regulation of business conduct of members of the Exchange. The PSE's Board of Governors is authorized under Section 1(f) to prescribe penalties for violation of Exchange rules and for neglect or refusal to comply with orders, directions, or decisions of the Board or of any standing committee, and for other offenses where penalties are not specifically provided by the Constitution. Under Section 2, the Chairman of the Board of Governors is the Chief Executive Officer of the Exchange responsible to the Board for the management of the PSE's business affairs. Additionally, Sections 4 and 5 of the Constitution provide that the Board of Governors appoints the President of the Exchange, its Chief Operating Officer, and the other officers of the Exchange

<sup>\*</sup>To the extent there is any remaining concern that the imposition of monetary damages against Board members for violations of Federal securities laws would deter persons from acting on PSE's Board of Governors, the Commission notes that Article 9 of the PSE's Certificate of Incorporation allows the Exchange to provide indemnification to members of its Board of Governors, within the limits permitted by Delaware law, to safeguard them from expense and liability for actions that they take in such capacity in good faith in furtherance of, or without belief that such actions are opposed to, the best interests of the PSE and its members. See also PSE Constitution, Article XVI, Section 1.

<sup>\*15</sup> U.S.C. 78f (1982).

<sup>&</sup>lt;sup>†</sup>15 U.S.C. 78s(b)(2) (1982).

<sup>\*17</sup> CFR 200.30-3(a)(12) (1989).

Loan Area as a result of damage from the oil spill in the Prince William Sound area, which occurred on March 24, 1989. All other information remains the same; i.e., the termination date for filing applications for eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere is the close of business on January 10, 1990 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, California 95853–4795, or other locally announced locations.

SBA must have evidence that the needed financial assistance is not available from Exxon or its agents before a small business may be considered for economic injury assistance.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: November 16, 1989.

#### Susan Engeleiter,

Administrator.

[FR Doc. 89-28046 Filed 11-29-89; 8:45 am] BILLING CODE 8025-01-M

## [Declaration of Disaster Loan Area No. 2384; Amdt. 3]

#### South Carolina; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with the notice by the Federal Emergency Management Agency dated November 16, 1989, to extend the termination date for filing applications for physical damage until December 20, 1989.

All other information remains the same; i.e., for economic injury the filing deadline is until the close of business on June 22, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 17, 1989.

#### Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-28048 Filed 11-29-89; 8:45 am] BILLING CODE 8025-01-M

## [Declaration of Disaster Loan Area No. 2382, Amdt. 1]

#### Virgin Islands; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with the notice by the Federal Emergency Management Agency dated November 16, 1989, to extend the termination date for filing applications for physical damage until December 4, 1989.

All other information remains the same; i.e., for economic injury the filing deadline is until the close of business on June 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 17, 1989.

#### Alfred E. Judd.

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-28047 Filed 11-29-89; 8:45 am] BILLING CODE 8025-01-M

## [Declaration of Disaster Loan Area No. 2390]

#### Virginia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on November 8, 1989, I find that the Buchanan County in the State of Virginia, constitutes a disaster area as a result of damages caused by severe storms, flooding, and mudslides on October 16–18, 1989. Applications for loans for physical damage may be filed until the close of business on January 10, 1990, and for economic injury until the close of business on August 8, 1990, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308, on other legally appropriate legality appropriate to the second state of the

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Russell and Tazewell in the State of Virginia and McDowell County in the State of West Virginia may be filed until the specified date at the above location.

Any counties contiguous to the abovenamed primary county and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The interest rates are:

#### 

Per

For Economic Injury: Businesses and small agricultural

The number assigned to this disaster for physical damage for the State of Virginia is 239006, and for economic injury the number is 687000. In Kentucky the economic injury number is 686900 and in West Virginia the economic injury number is 687100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59068)

Dated: November 17, 1989.

#### Alfred E. Judd.

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-23049 Filed 11-29-89; 8:45 am]

#### Region IX Advisory Council Public Meeting in San Francisco, CA

The U.S. Small Business
Administration Region IX Advisory
Council, located in the geographical area
of San Francisco, will hold a public
meeting at 10 a.m. on Wednesday,
December 6, 1989, at 211 Main Street,
5th floor, Conference Room 543, San
Francisco, California, to discuss such
matters as may be presented by
members, staff of the U.S. Small
Business Administration, or others
present.

For further information, write or call Office of District Director, U.S. Small Business Administration, San Francisco District Office, 211 Main Street-4th Floor, San Francisco, California 94105, phone (415) 744-6801.

Dated: November 22, 1989.

#### Jean M. Nowak,

Director, Office of Advisory Councils. [FR Doc. 89–28050 Filed 11–29–89; 8:45 am]

BILLING CODE 8025-01-M

## Regional V Advisory Council Public Meeting in Chicago, IL

The U.S. Small Business
Administration, Executive Committee of
Region V Advisory Council, located in
the geographical area of Chicago, will
hold a public meeting at 9:30 a.m. on
Friday, December 15, 1989, at the O'Hare
Hilton Hotel, Chicago, Illinois, to discuss
such matters as may be presented by
members, staff of the U.S. Small
Business Administration, or others
present.

For further information, write or call Roy A. Olson, Assistant Regional Administrator, U.S. Small Business Administration, 230 South Dearborn Street, room 510, Chicago, Illinois 60604– 1593, telephone number: 312/353–0359.

Dated: November 22, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils. [FR Doc. 89–28050 Filed 11–29–89; 8:45 am]

BILLING CODE 8025-01-M

#### Region V Advisory Council Public Meeting in Cleveland, OH

The U.S. Small Business
Administration Region V Advisory
Council, located in the geographical area
of Cleveland, will hold a public meeting
at 9:30 a.m. on Tuesday, December 12,
1989, at the Administration Building,
Cuyahoga Community College, 2900
Community College Avenue, room 210,
2nd Floor, Cleveland, Ohio, to discuss
such matters as may be presented by
members, staff of the U.S Small Business
Administration, or others present.

For further information, write or call S. Charles Hemming, District Director, U.S. Small Business Administration, 1240 East Ninth Street, room 317, Cleveland, Ohio 44199–2095, phone (216) 522–4180.

Dated: November 22, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils. [FR Doc. 89–28052 Filed 11–29–89; 8:45 am]

BILLING CODE 8025-01-M

#### Region I Advisory Council Public Meeting in Concord, NH

The U.S. Small Business
Administration Region I Advisory
Council, located in the geographical area
of Concord, will hold a public meeting at
10 a.m. on Tuesday, December 5, 1989, in
the James Cleveland Federal Building,
Room B-16, 55 Pleasant Street, Concord,
New Hampshire, to discuss such matters
as may be presented by members, staff
of the U.S Small Business
Administration, or others present.

For further information, write or call William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, 55 Pleasant Street, Concord, New Hampshire 03302–1257, phone (603)

225-1400.

Dated: November 22, 1989.

Iean M. Nowak.

Director, Office of Advisory Councils.

[FR Doc. 89-28053 Filed 11-29-89; 8:45 am] BILLING CODE 8025-01-M

#### Region VI Advisory Council Public Meeting; Cancellation of Meeting in Dallas, TX

The U.S. Small Business
Administration Region VI Advisory
Council, located in the geographical area
of Dallas, public meeting scheduled for
9:00 a.m., on Friday, December 8, 1989,
at the Business Resource Center, 4601,
North 19th Street, Waco, Texas, has
been canceled.

For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, Room 3C36, Dallas, Texas 75242, phone (214) 767–0605.

Dated: November 22, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc, 89-28054 Filed 11-29-89; 8:45 am]

#### [Application No. 01/01-0353]

#### Fairway Capital Corp.; Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by Fairway Capital Corporation, 285 Governor Street, Providence, Rhode Island 02906, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. et seq.), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders are:

Name	Title	Direct ownership (percent)
Paul V. Anjoorian, 285 Governor Street, Providence, Rhode Island 02906	Secretary/Director	0 0 0 100

Fairway Associates is a Florida partnership which is owned by:

Paul A. Anjoorian, 285 Governor Street, Providence, Rhode Island 02906 (percent).....

owned by:
Gary D. Kilberg, 285 Governor
Street, Providence, Rhode Island

Jennifer L. Kilberg, 285 Governor Street, Providence, Rhode Island 02906 (percent).....

The applicant will begin operations with a capitalization of \$2,500,000 and will be a source of equity capital and long term funds for qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management,

including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW., Washington, DC 20416.

A copy of this notice will be published in a newspaper of general circulation in Providence, Rhode Island.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies) Dated: November 17, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-28055 Filed 11-29-89; 8:45 am]
BILLING CODE 8025-01-M

[Application No. 02/02-0539]

IBJS Capital Corp.; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under provisions of section 301(d) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661. et seq.) has been filed by IBJS Capital Corporation, One State Street, New York, New York 10004 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers, directors, and sole shareholders of the Applicant are as follows:

Name	Title or relationship	Percent of ownership
Peter D. Matthy, 58 Tanglewylde Avenue, Bronxville, NY 10708  Corbin R. Miller, 1165 Firth Avenue, New York, New York 10029  Ronald M. Winters, 1015 Washington Street, Hoboken, NJ 07030  Sherry L. Mautone, 301 East 75th Street, New York, New York 10021  Stephen E. Davis, 130 Ridgewood Avenue, Glen Ridge, NJ 07028  Edward G. Hamway, Jr., 36 Waldron Avenue, Summit, NJ 07901  Takeo Kani, 641 Firth Avenue, New York, New York 10022  Peter Rona, 114 East 36th Street, New York, New York 10036  Alastair Merrick, 440 East 79th Street, New York, New York 10021  John Newman, 14 Arthur Place, Middletown, NJ 07748  Jean Zimmerman, 1155 Park Avenue, New York, New York 10128  IBJ Schroder Bank & Trust Company, One State Street, New York, New York 10004	President, Director Vice President Vice President Secretary, Director Director Director Controller Auditor Assistant Secretary	

Note: IBJ Schroder Bank & Trust Company conducts a general banking and trust business. The Industrial Bank of Japan, Ltd., Tokyo, Japan owns 95.1 percent of IBJ Schroder Bank & Trust Company. No one person owns 10 percent or more of The Industrial Bank of Japan, Ltd.

The Applicant, a Delaware
Corporation, will begin operations with
\$5,000,000 paid-in capital and paid-in
surplus. The Applicant will conduct its
activities primarily in the State of New
York, but will consider investments in
businesses in other areas in the United
States.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 21, 1989.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 89-28056 Filed 11-29-89; 8:45 am]

#### DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Blue Grass Airport, Lexington, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Lexington-Fayette Urban County Airport Board for Blue Grass Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Blue Grass Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 12, 1990.

DATES: Effective Date: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 13, 1989. The public comment period ends January 12, 1990.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Airports District Office, 3973 Knight Road, Suite #105, Memphis, Tennessee 38118–3004, (901) 521–3495. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Blue Grass Airport are in compliance with applicable requirements of part 150, effective November 13, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 12, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or

proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Lexington-Fayette Urban County Airport Board submitted to the FAA on June 6, 1989 noise exposure maps, descriptions and other documentation which were produced during Blue Grass Airport Noise Compatibility Study, December 1986-September 1988. These maps were first submitted for review September 1988. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Lexington-Fayette Urban County Airport Board. The specific maps under consideration are Current Year Noise Contours and Year 1993 Noise Contours with New Fleet Mix in the submission. The FAA has determined that these maps for Blue Grass Airport are in compliance with applicable requirements. This determination is effective on November 13, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests

exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under, section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Blue Grass Airport, also effective on November 13, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 12, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports District Office, 3973 Knight Arnold Road, Suite #105, Memphis, TN 38118-3004.

Mr. Mike Flack, Executive Director, Lexington-Fayette Urban County Airport Board, Blue Grass Airport, 4000 Versailles Road, Lexington, KY 40511.

Questions may be directed to the individual named under the heading, "FOR FURTHER INFORMATION CONTACT."

Issued in Memphis Airports District Office, November 13, 1989.

Wayne R. Miles,

Acting Manager.

[FR Doc. 89-28002 Filed 11-29-89; 8:45 am] BILLING CODE 49:0-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Hartford-Brainard Airport, Hartford, CT

AGENCY: Federal Aviation Administration, DOT. ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by the State of Connecticut for Hartford-Brainard Airport, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Hartford-Brainard Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 14, 1990.

DATES: Effective Date: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is November 15, 1989. The public comment period ends on January 14, 1990.

FOR FURTHER INFORMATION CONTACT: John Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-602, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Hartford-Brainard Airport is in compliance with applicable requirements of part 150, effective November 15, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 14, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in

consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The State of Connecticut submitted to the FAA on June 16, 1989, a noise exposure map, descriptions, and other documentation which were produced during the Airport Noise Compatibility Planning (part 150) Study at Hartford-Brainard Airport from January 1988 to October 1989. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section

104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the State of Connecticut. The specific map under consideration is Figure 1.1, along with the supporting documentation in Volume I: Noise Exposure Map of the part 150 Study. The FAA has determined that the map for Hartford-Brainard Airport is in compliance with applicable requirements. This determination is effective on November 15, 1989. FAA's determination on an airport operator's noise exposure map is limited to a finding that the map was developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example; which properties should be covered by the

provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 or FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Hartford-Brainard Airport, also effective on November 15, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 14, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the production of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, 800

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, New England Region, Airports Division, ANE-602, 12 New England Executive Park, Burlington, MA 01803.

Connecticut Department of Transportation, Bureau of Planning, 24 Wolcott Hill Road, Drawer A, Wethersfield, CT 06109–0801. Questions may be directed to the individual named above under the heading: "FOR FURTHER INFORMATION CONTACT."

Issued in Burlington, Massachusetts on November 15, 1989.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 89-28003 Filed 11-29-89; 8:45 am]
BILLING CODE 4910-13-M

## Aviation Security Advisory Committee meeting

AGENCY: Federal Aviation Administration.

ACTION: Notice of Aviation Security Advisory Committee meeting.

SUMMARY: Notice is hereby given of a change in the date of the second meeting of the Aviation Security Advisory Committee.

**DATE:** The meeting has been changed from December 13 to December 15, 1989, from 9 a.m. to 1 p.m.

ADDRESS: The meeting will be held at the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202– 267–9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held December 15, 1989, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: A review of the first committee meeting held October 20, 1989. A discussion of previously discussed and newly submitted items as they relate to designation of subcommittees by topical areas. A decision concerning subcommittee topics and membership.

Attendance at the December 15 meeting is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the Office of Civil Aviation Security, ACS, 800 Independence Avenue, SW...

Washington, DC 20591, telephone 202-267-9863

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on November 24, 1989.

Raymond A. Salazar,

Director of Civil Aviation Security.

[FR Doc. 89-28001 Filed 11-29-89; 8:45 am] BILLING CODE 4910-13-M

#### Federal Highway Administration [FHWA Docket No. 89-18]

RIN 2125-AC39

Handicapped Parking Regulatory Negotiation Advisory Committee; Meeting

AGENCY: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces the time and place of the next meetings of the Handicapped Parking Regulatory Negotiation Advisory Committee. These meetings are open to the public.

DATES: The meetings of the Handicapped Parking Regulatory Negotiation Advisory Committee will be held as follows:

To consider a draft report and recommended NPRM:

Wednesday, November 29, 1:00 p.m., to 5:30 p.m.,

Thursday, November 30, and Friday,
December 1, 1989 9 a.m. to 5:30 p.m.

To finalize the report and recommended NPRM, after members have the opportunity to discuss the report and recommended NPRM with persons they represent:

Monday, January 10, 1990, 1:00 p.m. to 5:00 p.m.,

Tuesday, January 11, and Wednesday, January 12, 1990 9:00 a.m. to 5 p.m.

ADDRESS: The meetings of the advisory committee will be held at the Department of Transportation, Room 4200, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Agency contact Mr. Vincent Nowakowski, FHWA, Office of Traffic Operations (202) 366–2214, Ms Judith S. Kaleta, FHWA, Office of the Chief Counsel (202) 366–0764, or Mr. E. William Fox, NHTSA, Office of the Chief Counsel (202) 366–1834 400 Seventh Street, SW., Washington, DC 20590. Mediator: Robert Robertory, Deputy Chief Administrative Judge, Board of Contract Appeals, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4305.

SUPPLEMENTARY INFORMATION: Pub. L. 100-841 directs the Secretary of Transportation to establish a uniform system for handicapped parking. This authority has been delegated to the FHWA and the NHTSA. To implement this law, the FHWA and the NHTSA have established an advisory committee for regulatory negotiation. 54 FR 24908 and 40770 (1989). The committee will develop a report concerning the establishment of a uniform system for handicapped parking to enhance the safety for handicapped parking to enhance the safety of persons with disabilities. This report will include a recommended rulemaking proposal and will be submitted to the Administrators of the FHWA and the NHTSA. After the agencies issue a notice of proposed rulemaking (NPRM), the committee will review any comments submitted to the rulemaking docket, and write a second report which will include a recommended final rule.

This advisory committee will consider the following issues:

1. The adoption of the International Symbol of Access (ISA) as the only recognized symbol for the identification of vehicles used for transporting individuals with handicaps that limit or impair the ability to walk.

2. The issuance of license plates displaying the ISA for vehicles which will be used to transport individuals with handicaps which limit or impair the ability to walk.

3. The issuance of removable windshield placards (displaying the ISA) to individuals with handicaps which limit or impair the ability to walk.

4. The fees charged for the licensing or registration of a vehicle used to transport individuals with handicaps.

5. The recognition of licenses and placards, which display the ISA and are issued by other States and countries.

We anticipate that this advisory committee will discuss matters that are ancillary to the issues set forth above.

In the notice of establishment of the advisory committee, which was published on October 3, 1989, 54 FR 40770, we noted that notices of the meetings will be published in the Federal Register if time permits. We noted that publication may not be possible in cases when the committee decides to meet for a few days, break for a few days, and then resume negotiations. However, through this notice, we are attempting to advise all interested parties of the committee meetings.

Issued on: November 22, 1989.

E. Dean Carlson,

Acting Executive Director Federal Highway Administration.

[FR Doc. 69-28090 Filed 11-29-89; 8:45 am] BILLING CODE 4910-22-M

#### **Maritime Administration**

[Docket S-855]

Lykes Bros. Steamship Co., Inc.; Application for Authorization To Permit Participation in a Reciprocal Space Charter and Coordinated Salling Agreement—FMC Number 232-011254

By application of November 7, 1989, Lykes Bros. Steamship Co., Inc. (Lykes) with respect to Operating-Differential Subsidy Agreement, Contract MA/MSB-451, requests authority required by the Maritime Administration to effect a Reciprocal Space Charter and Coordinated Sailing Agreement, so as to permit Lykes participation in Agreement 232–011254 (Agreement).

The Agreement was recently concluded between Lykes and Pharos Lines, A.A., doing business as Constellation Line (Constellation). The Agreement was filed with the Federal Maritime Commission on October 24, 1989, and has been assigned FMC

Number 232-011254.

Under the Agreement Lykes and Constellation, a Greek operator of foreign flag vessels, may agree on sailing schedules, service frequency, ports to be served and port rotation with respect to the trade between the United States Atlantic and Gulf and the Mediterranean including, among other areas, the Black Sea and North Africa, but excluding Italy, Spain, France and Portugal (Trade), as more specifically described in Article 4 of the Agreement. Further, the parties may charter space to and from each other, and in connection with such space charter, may provide equipment and jointly contract or coordinate in contracting with stevedores, terminals, ports and suppliers of equipment, land and services. The Agreement also permits the parties to advertise sailings, and, within specified limits, agree on the number, size and type of vessels operated by each in the Trade.

The Agreement does not create a joint service, permit pooling nor permit the parties to agree on rates or terms applicable to the shipping public other than as permitted by other agreements filed with the FMC. In addition, each party is required to utilize and maintain its own marketing and sales organizations and manage its own

vessels. The term of the Agreement is for at least one year, continuing thereafter unless either party desires to

terminate its participation.

Currently, Lykes serves Trade Route (TR) 13 (U.S. South Atlantic and Gulf/ Mediterranean and Black Sea) with a mixture of full containerships, combination vessels, and breakbulk vessels. Three full containerships are dedicated to the service while the other vessels are deployed on TR 13 depending upon their availability as well as the particular needs of the trade at that time. Constellation operates three combination vessels in the Trade, two with container and breakbulk capacity and one with RO/RO and container capacity. Lykes advises that the Agreement with Constellation will allow it to better utilize its vessels and better control scheduling.

Lykes states that it has entered into this Agreement in order to meet these circumstances and with the intention of receiving reciprocal business from Constellation and to [1] meet the needs of cargo interests as those needs change; (2) expand its container service to areas in the trade that are not presently being served, with a resultant increase in Lykes' market share; and (3) help establish Lykes' presence in new areas.

Finally, Lykes asserts that it can foresee no adverse impact from this Agreement. The Agreement will, in Lykes opinion, be beneficial because it will assist in increasing the U.S. flag share of the Trade, increase the scope of the U.S. service, provide added stability to the Trade and, as to Lykes, enable the realization of efficiencies from rationalization of sailings.

rationalization of sailings. Section 804(a) of the Act

Section 804(a) of the Act provides that "it shall be unlawful for any contractor receiving operating-differential subsidy under title VI to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act." Section 804(b) states that this provision may be waived by the Secretary under special circumstances and for good cause shown.

Other U.S.-flag competitors advertise service in the range covered by the Agreement. For this reason, the Maritime Administration is publishing this Federal Register notice as a matter

of discretion.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Merchant Marine Act, 1936, as amended, and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 p.m. on Dec. 13, 1989. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

[Catalog of Federal Domestic Assistance Program No. 20:804 (Operating-Differential Subsidies)].

By Order of the Maritime Administrator Dated: November 24, 1989.

#### Joel C. Richard,

Assistant Secretary, Maritime Administration.

[FR Doc. 89-27955 Filed 11-29-89; 8:45 am] BILLING CODE 4910-81-M

#### National Highway Traffic Safety Administration

[Docket No. 89-21; Notice 1]

RIN 2127-AC20

Evaluation Report on Door Locks and Roof Crush Resistance of Passenger Cars; Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components; Roof Crush Resistance; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT. ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard No. 206, "Door Locks and Door Retention Components" and No. 216, Roof Crush Resistance." This staff report evaluates safety effectiveness and benefits of improvements to door locks and roof structures in passenger cars. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

DATE: Comments must be received no later than: March 30, 1990.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC, 20590 (202-366-4949). [Docket hours, 9:30 a.m.-4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT:
Mr. Frank G. Ephraim, Director, Office of Standards Evaluation, Plans and Policy, National Highway Taffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC, 20590 (202–366–1574).

SUPPLEMENTARY INFORMATION: Standard No. 206 (49 CFR 571.206) regulates the door locks and door retention components of cars, light trucks, vans and multipurpose passenger vehicles. The standard took effect for cars on January 1, 1968 and is aimed at minimizing the likelihood of occupants being thrown from the vehicle as a result of impact. The auto industry steadily improved door lock design in the years leading up to 1968. Standard No. 216 (49 CFR 571.216) has applied to passenger cars since September 1, 1973 and its purpose is to reduce deaths and injuries due to the crushing of the roof into the passenger compartment in rollover accidents. During the Standard 216 rulemaking process, the auto industry changed roof design from hardtops to pillared cars with stronger roof support.

Pursuant to Executive Order 12291, NHTSA is conducting an evaluation of door locks and roof crush resistance of passenger cars to determine the effectiveness of technology selected by automobile manufacturers in preventing fatalities and to determine the benefits of the technology to consumers. Under the executive order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This evaluation is an analysis of the effectiveness and benefits of stronger door locks and roof structures in rollover crashes of passenger cars.

The evaluation is based on statistical analyses of accident data from Texas. the Fatal Accident Reporting System, the National Crash Severity Study, the National Accident Sampling System and Multidisciplinary Accident Investigation and roof crush data from laboratory tests of pre- and post-Standard 216 cars.

The principal findings and conclusions of this study are the following:

 Door latch improvements implemented during 1963-68 save an estimated 400 lives per year, reducing the risk of ejection in rollover crashes by 15 percent.

· The shift from hardtops to pillared cars, in response to Standard 216, saves an estimated 110 lives per year.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a selfaddressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50 and 501.8.) Issued on: November 27, 1989.

Adele Derby,

Associate Administrator for Plans and Policy. [FR Doc. 89-27996 Filed 11-29-89; 8:45 am] BILLING CODE 4910-59-M

#### DEPARTMENT OF THE TREASURY

**Public Information Collection** Requirements Submitted to OMB for Review

Dated: November 24, 1989. The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

#### Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0078. Form Number: ATF F 1533 (500.18). Type of Review: Extension. Title: Consent of Surety.

Description: A consent of surety is executed by both the bonding company and a proprietor and acts as a binding legal agreement between the two parties to extend the terms of a bond. A bond is necessary to cover specific liabilities on the revenue produced from untaxpaid

commodities. The consent of surety is filed with ATF and a copy is retained by ATF as long as it remains current and in

Respondents: Business or other forprofit, Small businesses or organizations.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion. Estimated Total Reporting Burden: 2,000 hours.

OMB Number: 1512-0177. Form Number: ATF F 5100.29. Type of Review: Extension.

Title: Catering Locations.

Description: ATF F 5100,29 is used by caterers to register all changes of locations within a previous 30-day period. This is to identify where liquor was sold at locations other than what was listed on the special tax stamp issued to the caterer. The form is filed in duplicate by the caterer. The form is filed in duplicate by the caterer, along with an amended ATF F 5630.5.

Respondents: Individuals or households, Businesses or other forprofit, Small businesses or organizations.

Estimated Number of Respondents: 500

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion. Estimated Total Reporting Burden: 250 hours.

OMB Number: 1512-0192. Form Number: ATF REC 5110/02-ATF 5110.11.

Type of Review: Extension. Title: Distilled Spirits Plant (DSP) Warehousing Records and Reports.

Description: The information collected is used to account for the proprietor's tax liability adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for an efficient allocation of field personnel.

Respondents: Businesses or other forprofit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 212. Estimated Burden Hours Per

Response: 2 hours.

Frequency of Response: Monthly. Estimated Total Reporting/ Recordkeeping Burden: 5,088 hours.

OMB Number: 1512-0198. Form Number: ATF REC 5110/03-ATF F 5110.28.

Type of Review: Extension. Title: Distilled Spirits Plant (DSP) Processing Records and Report.

Description: The information collected is necessary to account for and verify the processing of distilled spirits in bond. It is used to audit plant operations, monitor industry activities for the efficient allocation of personnel resources and the compilation of statistics.

Respondents: Businesses or other forprofit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 141.

Estimated Burden Hours Per Response: 2 hours.

Recordkeeping: 5 hours. Frequency of Response: Monthly. Estimated Total Reporting Burden: 4.089 hours.

OMB Number: 1512-0207. Form Number: ATF REC 5110/04-ATF F 5110.43.

Type of Review: Extension. Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.

Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.

Respondents: Businesses or other forprofit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 93.

Estimated Burden Hours Per Response: 1 Hour.

Frequency of Response: Monthly. Estimated Total Reporting Burden: 1,116 hours.

OMB Number: 1512-0392. Form Number: ATF REC 5190/1. Type of Review: Extension. Title: Record of Things of Value Furnished to Retailers Under the Federal Alcohol Administration Act.

Description: These records (bills of sale, invoices) are used to show compliance with provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers. These records are commercial invoices showing the furnishing of goods to retailers.

Respondents: Individuals or households, Businesses or other forprofit, Small businesses or organizations.

Estimated Number of Recordkeepers:

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other. Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

#### Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-28031 Filed 11-29-89; 8:45 am] BILLING CODE 4810-25-M

#### Public Information Collection Requirements Submitted to OMB for Review

Dated: November 24, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

#### Internal Revenue Service

OMB Number: 1545–0874. Form Number: 8328. Type of Review: Extension.

Title: Carryforward Election of Unused Private Activity Bond Volume

Cap.

Description: Section 146(f) of the Internal Revenue Code requires that issuing authorities of certain types of tax-exempt bonds must notify the IRS if they intend to carry forward the unused limitation for specific projects. The IRS uses the information to complete the required study of tax-exempt bonds (required by Congress).

Respondents: State or local governments, Businesses or other forprofit.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping	5 hours, 44
	minutes.
Learning about the law or the form.	1 hour, 53 minutes.
Preparing and sending the form to IRS.	2 hours, 4 minutes.

Frequency of Response: On occasion.
Estimated Total Recordkeeping/
Reporting Burden: 96,900 hours.

OMB Number: 1545–1016.
Form Number: 8613.
Type of Review: Extension.
Title: Return of Excise Tax on
Undistributed Income of Regulated
Investment Companies.

Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Businesses or other forprofit.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per Response/Recordkeeping:

Frequency of Response: Annually. Estimated Total Recordkeeping/ Reporting Burden: 15,570 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503. Lois K. Holland,

Departmental Reports, Management Office. [FR Doc. 89–28032 Filed 11–29–89; 8:45 am] BILLING CODE #810-25-M

#### Office of Foreign Assets Control

Cuban Assets Control; Fitness and Qualification of License Applicants

AGENCY: Department of the Treasury.
ACTION: Notice.

SUMMARY: Consistent with the licensing requirements governing persons engaged in travel service to, from, and within Cuba and persons forwarding family remittances to Cuba, the Office of
Foreign Assets Control invites public
comment concerning the fitness and
qualification of license applicants. It
also informs the public of the identity of
additional travel service providers and
family remittance forwarders authorized
to engage in these services.

DATE: Comments must be submitted on or before January 29, 1990.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief of Enforcement, Tel.: (202) 376–0400, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376–0236, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: Sections 515.560 and 515.563 of the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), were amended, effective December 23, 1988, to require that persons engaged in service transactions related to travel to Cuba or the forwarding of remittances to close relatives in Cuba obtain a specific license from the Office of Foreign Assets Control. The Regulations provide that licenses will be issued only upon the applicant's affirmation and demonstration "that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States." 31 CFR 515.560(i)(1)(ii).

On April 21, 1989 and on June 6, 1989, the Office of Foreign Assets Control published a list of license applicants, who had been granted provisional authority to provide services pending review of their completed license applications (54 FR 16188 and 54 FR 24262). Provisional authority based on submission of a completed license application is necessary to lawfully provide travel services or family remittance forwarding services. Subsequent to the publications of the earlier notices, 13 additional license applicants, listed below, have submitted completed applications and have been granted provisional authority to engage in these services.

In order to evaluate the assertions made by license applicants that they do not engage in discriminatory practices, and to determine the fitness and qualification of the license applicants listed below, anyone having personal knowledge regarding the applicants (including employees, officers, and directors) is invited to comment concerning the following:

1. Any evidence of discrimination based on race, color, religion, sex, citizenship, place of birth, national origin, or ability to pay (charging different amounts based on the financial means of the travelers) with regard to the provision of or payment required for accommodations and meals, or other services provided in connection with travel to, from, or within Cuba;

2. Any evidence of demanding, soliciting, receiving, or forwarding to Cuba payments or remittances in excess of the amounts permitted by § 515.563 of the Cuban Assets Control Regulations, namely family remittances to close relatives in amounts not to exceed \$500 in any consecutive 3-month period to any one payee or household, and remittances for the purpose of enabling emigration from Cuba on a one-time basis in an amount not to exceed \$500 to any one payee; and

3. Any evidence of charging any fees prohibited by U.S. law or any arbitrary and exorbitant fees which exceed the total of official Cuban government consular fees and reasonable service

charges.

Comments should be submitted in writing to the Office of Foreign Assets Control, Department of the Treasury. 1331 G Street, NW., Room 400, Washington, DC 20220. To the extent permitted by law, the identity of anyone submitting information, as well as any identifying information provided, will be held in confidence and will not be released without the express permission of the person submitting the information. Any information provided will be evaluated by the Director of the Office of Foreign Assets Control to determine its reliability and relevance to the investigation of applicants.

List of Applicants for Licenses to Perform Travel, Carrier, and Family Remittance Forwarding Services:

Name of Applicant (Company Name of Individual); Principal Officer (If Applicant is Incorporated); Address (As Supplied by Applicant)	Branch Offices(s) Travel service provider ("TSP"); Carrier service provider ("CSP"); Family remittance forwarder ("FRF")
Estrellita Travel, Estrella M. Ponce, 414, 65th St., West New York, NJ 07093.	TSP, FRF.
Happy World Travel Agency, Inc., Louise E Sanchez, 1300 S. Semoran Blvd., Orlando, FL 32807.	TSP, FRF.
La Ilsa Erivios, Lydia E Suarez, 6451 E. Clara St., Bell Gardens, CA 90201.	TSP, FRF.
International Fast Service, Inc., Oscar F. Perez, 1183 W. 37th St., Hialeah, FL 33012.	TSP, FRF.
Jetflite, Inc., George R. Armagost, 1500 N.W. 62nd St., #414, Ft. Lauderdale, FL 33309.	CSP.

-		
	Name of Applicant (Company Name of Individual); Principal Officer (If Applicant is Incorporated); Address (As Supplied by Applicant)	Branch Offices(s) Trave service provider ("TSP") Carrier service provider ("CSP"); Family remittance forwarder ("FRF")
	La Perle De Las Antillas, Edwin G. Morales, 6852 W. Flagler St.,	TSP, FRF.
	Miami, FL 33144.  Medi-Cuba Express Service Co., Inc., Ceferino Perez-Carril,	FRF.
The state of the s	588 W. 207th St., New York, NY 10034. Nile Tours and Multiple Services, Inc., Gladys B. Bulnes, 1889 W.	TSP, FRF.
September 1	Flagler St., Miami, FL 33135. Ricardo Pascual & Asociados, Ricardo	TSP.
	J.M. Pascual, 124 Condado Ave., #502, Santurce, Puerto Rico 00907.	
	Sabal Palm Airways, Inc., Gilbert Chacon, 1575 W. Commercial Blvd., Hanger #38, Ft.	CSP.
	Lauderdale, FL 33309. Solymar Corp., Adis Ramos, 585 E. 49th St., #18-17, Hialeah, FL 33013.	TSP, FRF.
		and the second second

The following companies listed solely for family remittance forwarding in a previous notice have also received authorization as travel service providers:

TSP, FRF.

Augusto P. Rodriguez, 1359 S.W. 1st St.,	Charleton Control
Miami, FL 33135. Cuba Envios, Inc.,	TSP, FRF.
Carmen Ordenes.	Tor, rice.
4700 NW., 7th St., #8,	
Miami, FL 33126.	Independent transport
El Espanol Corporation,	TSP, FR.
Augusto C.	
Rodriquez, 8938 SW. 40th St., Miami, FL	
33165.	
Exportaciones	TSP, FRF.
Cubanacan, Inc., Jose	
Mesa, 2319 NW. 7th	THE REAL PROPERTY.
St., Miami, FL 33125.	The State of the S

Dated: November 6, 1989.

R. Richard Newcomb,

Almacen El Espanol,

Director, Office of Foreign Assets Control.

Approved: November 15, 1989.

Salvatore R. Martoche,

Assistant Secretary (Enforcement).
FR Doc. 89–28129 Filed 11–29–89; 8:45 am]
BILLING CODE 4810-25-M

#### DEPARTMENT OF VETERANS AFFAIRS

Conversion of Select Federal Supply Schedule Items From a Multiple Award Schedule to a Single Award Schedule

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) is proposing to convert select items currently under Federal Supply Schedule Group 65, part II, from a Multiple Award Schedule (MAS) to a Single Award Schedule (SAS).

DATES: Written comments must be received on or before January 2, 1990, and should include consideration of potential impact on small business concerns. Comments will be available for public inspection until January 11, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, (except holidays), until January 9, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne H. Taylor, Federal Supply Schedule Division (904C), Department of Veterans Affairs Marketing Center (312) 216–2495.

SUPPLEMENTARY INFORMATION: The items proposed for conversion from a Multiple Award Schedule (MAS) to a Single Award Schedule (SAS) are: (1) Antimicrobial Soap; (2) Stretcher, Hospital (adjustable back rest) and (3) Sphygmomanometers, Mercury and Aneroid. This proposed action is published in accordance with General Services Administration Handbook, Supply Operations, Chapter 38 (FSS P2901.2A), and Federal Acquisition Regulation (FAR) 38.2.

Dated: November 21, 1989.

Edward J. Derwinski,

Secretary.

[FR Doc. 89-27980 Filed 11-29-89; 8:45 am]
BILLING CODE 8320-01-M

#### Regional Office Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, that on December 22, 1989, at 1:00 p.m, the U.S. Department of Veterans Affairs Regional Office Committee on Educational Allowances shall at Estes Kefauver Federal Building-U.S. Courthouse, Room A-220, 110 Ninth Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether VA benefits to all eligible persons enrolled in Stage One-The Hair School, 33 North Cleveland, Memphis, Tennessee 38104, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: November 22, 1989.

R.S. Bielak,

Director, VA Regional Office.

[FR Doc. 89-27979 Filed 11-29-89; 8:45 am]

#### **Performance Review Board Members**

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5
U.S.C. 4314(c)(4) agencies are required to publish a notice in the Federal
Register of the appointment of
Performance Review Board (PRB)
members. This notice revises the list of members of the Department of Veterans
Affairs (VA's) Performance Review
Boards which was published in the

Federal Register (53 FR 46742, dated November 18, 1989).

EFFECTIVE DATE: November 6, 1989.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (05A3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3423.

#### VA Performance Review Board (PRB)

Anthony J. Principi, Deputy Secretary of Veterans Affairs (Chairperson)

Ronald E. Cowles, Deputy Assistant Secretary for Personnel and Labor Relations

Arthur J. Lewis, M.D., Deputy Chief Medical Director

H. Robert Saldivar, Deputy Assistant Secretary for Acquisition and Materiel Management

Robert W. Schultz, Deputy Assistant Secretary for Administration

#### **Veterans Benefits Administration PRB**

Harold F. Gracey, Executive Assistant to the Chief Benefits Director (Chairperson)

Raymond H. Avent, Deputy Chief Benefits Director for Field Operations Grady W. Horton, Deputy Chief Benefits

Director for Program Management Richard Pell, Jr., Director, Operations and Policy Staff

Rhoda R. Mancher, Deputy Chief Benefits Director for ADP Systems Management

#### Veterans Health Services and Research Administration PRB

Arthur J. Lewis, M.D., Deputy Chief Medical Director (Chairperson) Sidney M. Ford, Regional Director, Midwestern Region George H. Gray, Acting Regional

Director, Northeastern Region Robert E. Lindsey, Jr., Regional Director, Western Region

Richard P. Miller, Regional Director, Southwestern Region

Richard Pell, Jr., Director, Operations and Policy Staff

Robert A. Perreault, Executive Assistant to the Chief Medical Director Peter F. Regan, M.D., Assistant Chief

Medical Director for Academic Affairs
Carl L. Stephensen, Acting Regional
Director, Mid-Atlantic Region
Donald B. Thompson, Regional Director

Donald B. Thompson, Regional Director, Southeastern Region

Daniel H. Winship, M.D., Associate
Deputy Chief Medical Director

Charles V. Yarbrough, Director,
Management Support Office
Albert Zamberlan, Regional Direct

Albert Zamberlan, Regional Director, Great Lakes Region

#### Office of Inspector General PRB

Milton McDonald, Deputy Assistant Inspector General for Audit, Department of State (Chairperson)

Miriam F. Browning, Deputy Assistant Inspector General for Administration and Information Management, Department of Defense

H. Rae Scott, Assistant Inspector General for Investigations, Department of Transportation

Dated: November 21, 1989.

Edward J. Derwinski,

Secretary.

[FR Doc. 89-27981 Filed 11-29-89; 8:45 am]
BILLING CODE 8320-01-M

## **Sunshine Act Meetings**

Federal Register

Vol. 54, No. 229

Thursday, November 30, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

#### COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 1, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-28161 Filed 11-28-89; 2:20 pm]

BILLING CODE 6351-01-M

#### COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 8, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission. [FR Doc. 89-28162 Filed 11-28-89; 2:20 pm]

BILLING CODE 6351-01-M

#### COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 15, 1989.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission. [FR Doc. 89-28163 Filed 11-28-89; 2:20 pm] BILLING CODE 6351-01-M

#### COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 22, 1989.

PLACE: 2033 K St. NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission. [FR Doc. 89-28164 Filed 11-28-89; 2:20 pm]

-BILLING CODE 6351-01-M

#### COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, December 29, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission. [FR Doc. 89-28165 Filed 11-28-89; 2:20 pm] BILLING CODE 6351-01-M

#### FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 5, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington,

STATUS: This meeting will be closed to the public.

#### ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Tuesday, December 7, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (ninth floor). .

STATUS: This meeting will be closed to

#### MEMBERS TO BE CONSIDERED:

Setting of Dates for Future Meetings. Correction and Approval of Minutes. Draft Advisory Opinion 1989-27: Mr. Jon L. Bryan Drug Free Workplace Revised Instruction

Administrative Matters

#### PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-28222 Filed 11-28-89; 3:20 am]

BILLING CODE 6715-01-M

### U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: December 10 and 11,

PLACE: Embassy Suites, Hotel, Delegate Room, 1250 22nd Street, NW., Washington, DC 20037, (202) 857-3388.

December 10, 1989, 1:15 p.m.-2:00 p.m., Closed, Sec. 1703.202 (2) and (6) of the Code of Federal Regulations, 45 CFR, part 1703;

December 10, 1989, 2:00 p.m.-5:45 p.m.,

December 11, 1989, 9:00 a.m.-2:30 p.m., Open.

#### MATTERS TO BE DISCUSSED:

Chairman's Report **Executive Director's Report** NCLIS Committee Reports:

-Budget and Finance

-Governance

Indian Library Services

-Information Policies

-International

-Legislative

-Personnel

Program Review

-Public Affairs

-Recognition Awards

School Media

-White House Conference II Election of NCLIS Vice Chairman Library of Congress Status Report, Winston Tabb, Acting Deputy Librarian of Congress

NCLIS Statistics Program Report White House Conference on Library and Information Services Advisory Committee Report, Daniel Carter, Chairman

Discussion on Republication of: National Information Policy Report Public/Private Sector Report

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254-3100.

#### FOR FURTHER INFORMATION CONTACT: Susan K. Martin, NCLIS Executive Director, 1111 18th Street, NW., Suite

310, Washington, DC 20036, (202) 254-3100.

Dated: November 28, 1989.

Jane D. McDuffie,

Staff Assistant.

[FR Doc. 89-28160 Filed 11-28-89; 2:19 pm]

## UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, December 4, 1989, and at 8:30 a.m. on Tuesday, December 5, 1989, in Phoenix, Arizona. The December 4 meeting, at which the Board will discuss preparations for the rate case filing, is closed to the public. (See 54 FR 47449, November 14, 1989). The December 5 meeting is open to the public and will be held in Conference

Room 113-A at the Phoenix Main Post Office, 4949 East Van Buren Street. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

#### Agenda

Monday Session

December 4-1:00 p.m. (Closed)

Preparation for Rate Case Filing. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group; and Frank R. Heselton, Assistant Postmaster General, Rates and Classification Department)

Tuesday Session—Phoenix Main Post Office

December 5-8:30 a.m. (Open)

Counsel)

- 1. Minutes of the Previous Meeting, November 8-7, 1989.
- 2. Remarks of the Postmaster General.
  3. FY 1989 Financial Statements. (Mr. Copple)
- 4. Annual Comprehensive Statement to Congress. (Louis A. Cox, General

5. Overview of Automation Program to Date.
(Allen R. Kane, Assistant Postmaster
General, Delivery, Distribution, and
Transportation Department; and Peter A.
Jacobson, Assistant Postmaster General,
Engineering and Technical Support
Department)

 Chief Inspector's Report on Consumer Protection. (Charles R. Clauson, Chief Postal Inspector)

7. Report on EEO/Affirmative Action Programs in the Phoenix Division. (David C. Bakke, Phoenix Field Division General Manager/Postmaster)

8. Capital Investments. (Stanley W. Smith, Assistant Postmaster General, Facilities Department)

 Fort Myers, Florida, General Mail Facility.

 b. San Francisco, California, Polk Gulch Station.

 Tentative Agenda for January 8-9, 1990, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 89-28146 Filed 11-28-89; 9:12 am]

BILLING CODE 7710-12-M



Thursday November 30, 1989



# Department of the Treasury

Office of Thrift Supervision

12 CFR Ch. V

Transfer and Recodification of Regulations Pursuant to Financial Institutions Reform, Recovery and Enforcement Act of 1989; Final Rule



### DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Ch. V

[No. 89-244]

Transfer and Recodification of Regulations Pursuant to Financial Institutions Reform, Recovery and Enforcement Act of 1989

Data: October 10, 1989.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

DATE: October 10, 1989.

SUMMARY: The Office of Thrift Supervision ("OTS" or "Office") has recently published a notice in the Federal Register notifying the public that, pursuant to the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183, signed into law on August 9, 1989, the authority to regulate thrift institutions has been transferred from the Federal Home Loan Bank Board ("Bank Board" or "Board") to the Office. 54 FR 34637 (August 21, 1989). This final rule supplements that Notice by republishing 12 CFR chapter V, as revised pursuant to that legislation, to reflect this shift in authority.

EFFECTIVE DATE: November 30, 1989. Except §§ 567.1, 567.2, 567.5, 567.6, and 567.8 through 567.11 are effective December 7, 1989, § 571.19 is effective January 1, 1990, and §§ 545.131, 545.132, and 545.141(d) are effective December 15, 1989.

FOR FURTHER INFORMATION CONTACT: The following contact persons will direct callers to the appropriate legal or policy personnel who will be able to provide additional information about a

specific regulation.

General investment authority of Federal savings associations, liquidity, capital, accounting, loans to one borrower, appraisals, classification of assets, safety and soundness regulations: Mary J. Hoyle, (202) 906–7135, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Incorporation, organization, and corporate structure of Federal savings associations, conversions, securities, accounting, transactions with affiliates, management interlocks, community reinvestment, acquisition of control, savings and loan holding company regulations: Linda Beamer, (202) 908–6536, Corporate and Securities Division, Chief Counsel's Office, Office of Thrift

Supervision, 1700 G Street, NW., Washington, DC 20552.

Rules of practice and procedure, adjudication of enforcement actions, and conduct of investigations and formal examinations: Gary Gegenheimer, (202) 906–7170, Enforcement, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

All other areas not specifically listed above: Mary J. Hoyle, (202) 906–7135, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183, signed into law on August 9, 1989, has transferred the authority to regulate savings associations from the Bank Board in its own right and as operating head of the Federal Home Loan Bank System ("Bank System") and the Federal Savings and Loan Insurance

Corporation ("FSLIC") to the Office.
This document is the second of a series of documents that the Office anticipates adopting and publishing over the next several months. It follows the "Statement of Organization, Functions, and Delegations of Authority," 54 FR 34637 (Aug. 21, 1989), which provided, inter alia, that all former Bank Board and FSLIC regulations in areas placed within the Office's authority by FIRREA "remain in effect and enforceable by the Office, until such time as modified, canceled, or repealed by the Office." Today's final rule reflects all of the changes made to the Board's regulations as in effect on the day prior to enactment of the FIRREA necessary in order to continue and transfer such regulations to the Office as the appropriate thrift regulatory authority as designated in FIRREA.3

Chapter V, as modified, sets forth the new regulatory structure for the thrift industry. Modifications are being made to the transferred regulations in order to effect the amendment, transfer, or repeal of sections of the governing statutes and corresponding changes in responsibilities. Cross-references to Title IV of the National Housing Act ("NHA") and the Federal Home Loan

Bank Act ("FHLBA") are being changed

to refer to sections of the Home Owners' Loan Act of 1933 ("HOLA") or Federal Deposit Insurance Act ("FDIA") where appropriate. Transferred regulations are also being revised to reflect substantive statutory changes in authority. The body of regulations as a whole is being reorganized in some areas, particularly in those regulations formerly located in Subchapters A and B and Parts 547, 555, 563, and 570. Any cross-references affected are modified to reflect these changes. A conversion table is incorporated for ease of reference. Technical changes are also being made where appropriate to renumber paragraphs within sections.

This package also contains two sets of regulations adopted by the Office and published in the Federal Register prior to today's republication. These regulations, which appear in Parts 502 and 567, are included in today's document in full text for ease of

reference. New regulations mandated by the statute that are not required to be implemented immediately will be adopted over the upcoming months, as dictated by the timetables in the FIRREA. This will include revisions, for example, to the Office's appraisal and qualified thrift lender regulations. This process will also include a review of the transferred regulations to determine which should be modified in conformance with the statutory dictate that the Office's rules, regulations, and policies governing the safe and sound operation of savings associations be no less stringent than those of the Office of the Comptroller of the Currency ("OCC"). The Office also anticipates making further revisions to a number of existing regulations and adopting new regulations over the next few months in order to further the Office's mandate to promote the safe and sound operation of the thrift industry. The Office will attempt to publish, where possible, related proposals and related final regulations together in the Federal Register for ease of reference.

The following are brief descriptions of the general changes made throughout the regulations pursuant to FIRREA, and brief descriptions of the changes made to particular parts.

#### General

References to the Bank Board are generally being changed to references to the Office of Thrift Supervision, or, where appropriate, to the Director of the Office. References to the Office of Regulatory Activities or its predecessor offices now refer to the Senior Deputy Director for Supervision (Operations) or

<sup>&</sup>lt;sup>1</sup> The Office is aware of the existence of some confusion due to the recent promulgation by the Federal Housing Finance Board ("FHFB") of certain regulations that duplicate regulations remaining within the Office's authority. See 54 FR 38757 (September 5, 1989). The promulgation of such regulations by the FHFB does not in any way affect or diminish the Office's authority regarding the duplicated regulations.

Senior Deputy Director for Supervision (Policy) as appropriate. References to the former Office of District Banks now refer to the Senior Deputy Director for Supervision (Operations), where those functions are now located. References to the former Office of General Counsel now refer to the Chief Counsel's office. where those functions are now located. Before the FIRREA, a number of the Bank Board's supervisory functions were located in the Federal Home Loan Banks and performed by the Board's Principal Supervisory Agents and Supervisory Agents. The regulations now refer instead to the District Directors in the Office's District Offices, who will perform those functions.

References to accounts insured by the FSLIC or deposits insured by the Federal Deposit Insurance Corporation ("FDIC") are being amended to reflect the new insurance structure whereby savings associations are members of the Savings Association Insurance Fund, while commercial banks and certain savings banks are members of the Bank Insurance Fund. Both funds are administered by the FDIC. Regulations that previously referred to the FSLIC are being amended to refer to either the Office, the FDIC, or the Resolution Trust Corporation ("RTC"), as appropriate.

Under the former statutory and regulatory structure, a number of safety and soundness regulations promulgated pursuant to the NHA referred to "insured institutions" and tied certain requirements to applications for insurance of accounts. Similarly, other regulations, notably those governing liquidity, had been promulgated pursuant to the Bank Board's thenexisting authority under the FHLBA and referred to "member institutions". These references are being modified to refer to "savings associations" and tied to the new statutory and regulatory structure of the Office.

Certain parts and sections within the chapter that formerly governed those functions of the Bank Board or the FSLIC that have been transferred to other agencies have, therefore, not been readopted by the Office today. These parts and sections include those dealing with the credit function performed by the Federal Home Loan Banks (now under the jurisdiction of the FHFB) and to the insurance fund and receivership functions formerly performed by the FSLIC and now under the FDIC or RTC. See 54 FR 36757 (September 5, 1989) (FHFB); 54 FR 41359 (October 6, 1989), 54 FR 42799 (October 18, 1989) (FDIC).

#### Part 500

The organizational regulations of the Office are now set forth in part 500.

They are being revised to indicate the new structure of the Office.

#### Part 502

The assessments regulation codified in part 502 and previously published by the Office in the Federal Register of September 29, 1989 (54 FR 39983) is incorporated herein in full text for ease of reference.

#### Part 505

The Office, as a component part of the Department of the Treasury, is covered by its FOIA regulations at 31 CFR part I, subpart A. Those regulations permit bureaus and offices of the Treasury Department to supplement those Department-wide regulations. While the Office anticipates revising its FOIA regulations in the near future, today's revisions are limited to incorporating references to Treasury regulations at 31 CFR part 1, subpart A and items required by these regulations.

#### Part 505a

The Privacy Act regulations formerly appearing at part 505a have been substantially superseded because the Office, as a component part of the Treasury Department, is covered by the regulations appearing at 31 CFR part 1, subpart C. Part 503 contains the Office's specific regulations in this area.

#### Part 505b

Former part 505b, which governed public information regarding meetings of the Bank Board under the Government in the Sunshine Act is being repealed, as the Office is not a deliberative body subject to that Act.

#### Part 505c

Former part 505c is being redesignated as part 504.

### Part 505d

Former part 505d is being removed as the list of OMB control numbers contained therein no longer accurately reflects the current regulations and assigned control numbers.

#### Part 508

Former part 508 is being removed.
Former §§ 508.10, 508.10–1, and part of 508.13 are being incorporated into new § 510.2. Former § 508.16 is being redesignated as 510.3. The remaining sections have been removed as unnecessary because they are duplicative of the Administrative Procedure Act.

#### Parts 509, 509a, 512, and 513

These parts have been modified to reflect the Office's new statutory

enforcement authorities. In particular, the list of civil money penalty provisions giving rise to an administrative hearing has been expanded to include the new powers of the Office granted by FIRREA. Former part 509a is being redesignated as part 508.

#### Part 510

Part 510 is being expanded to incorporate provisions formerly located in parts 508 and 551.

#### Part 511

Part 511 has been removed as the Treasury's ethics regulations (31 FR part 0) apply to the Office and its employees. The Office will, from time to time, supplement those regulations by issuing policies or guidance that will apply to all Office employees.

#### Part 514

Part 514, which contained regulations governing the Federal Savings and Loan Insurance Advisory Committee, has been removed, as section 713 of the FIRREA has removed the statutory provisions creating this body.

### Part 516

Part 516 previously contained regulations which implemented the Drug-Free Workplace Act of 1988 as well as regulations governing Governmentwide nonprocurement debarment and suspension. The Department of the Treasury has adopted these as Departmentwide regulations and codified them at 31 CFR part 19. Because the Office is a component of the Department of the Treasury, and therefore covered by its Departmentwide regulations, the regulations contained in part 516 would be duplicative and are removed.

Sections 523.10, 523.11, 523.12, 523.13, 523.14, 523.29, 526.1, 526.2, 531.8 and 531.10, Parts 533 and 535

These sections under the former regulatory structure applied to members of the Federal Home Loan Bank System. The FIRREA has transferred regulatory responsibilities in the areas covered by these parts to the Office, as thrift regulator or has otherwise provided the Office with authority to address these issues. The regulations will now apply to all savings associations, regardless of their membership in a Federal Home Loan Bank, and accordingly are being incorporated in the regulations governing the operations of savings associations. Former §§ 523.10 through 523.14, governing liquidity, are being placed into a new part 568. Former § 523.29, governing flood insurance, is

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being added as new § 563.48. Section 526.1 is being incorporated into the definitions in part 561. Section 526.2 is being incorporated into the advertising regulation § 563.27. Sections 531.8 and 531.10, statements of policy, are now § § 571.24 and 571.25.

#### Parts 528 and 529

The Office is adopting, with only nomenclature changes, the former Bank Board nondiscrimination regulations.

#### Part 532

Former § 532.1 has been transferred to part 571 and redesignated as § 571.17 in the interests of consolidating the Office's codified Statements of Policy that apply to all savings associations. It is being further modified as set forth in the discussion under that part.

#### Part 541

Some definitions in this part are being modified to reflect nomenclature changes. A cross-reference to the definitions located in part 561 has been added. The new statutory term "Federal savings association" replaces the term "Federal association". The term "Principal supervisory agent" has been deleted and is being replaced with "District Director" to conform with the new regulatory structure. The terms "insured institution" and "Supervisory Agent" have been removed.

#### Part 543

1. Section 543.2(g) is being modified to incorporate the charter approval standards set forth at 12 U.S.C. 1464(e) and to provide that charter approvals will be conditioned upon receipt of written confirmation of FDIC insurance of accounts. A conforming change is being made to § 543.2(b) to eliminate the unnecessary recitation of the charter approval standards. The terminology of § 543.2(g)(3)(iii) is being revised to enhance its clarity and to eliminate inconsistency with § 543.5 regarding the timing of the issuance of charters. A new paragraph (g)(3)(iii)(f) is being added to confirm that Federal savings associations may not commence accepting deposits until their organization is completed. The approval procedures for interim Federal savings associations, \$ 543.2(h)(2), are also being revised to incorporate the charter approval standards set forth at 12 U.S.C. 1464(e), to the extent relevant.

2. New language is being added to \$ 543.6(d) to confirm that the organization of a Federal savings association is not deemed complete until the association has obtained Federal Home Loan Bank membership, insurance of accounts has been

confirmed (in the case of Federal savings associations not already insured by the FDIC), and all conditions imposed in connection with approval of the organization application have been met. Cf. § 552.2-1(h)(6).

3. Section 543.7–1, which provides for the issuance of charters in supervisory cases, is being revised to reflect the fact that such associations will now be proposed by the FDIC, the RTC and the Office, instead of the FSLIC.

4. Section 543.9(c) is being amended to provide that approvals of charter conversions by the District Director will be conditioned upon receipt of written confirmation of FDIC insurance of accounts (in the case of associations not already insured by the FDIC) and Federal Home Loan Bank membership.

5. Section 543.11–1(a) is being amended to reflect changes to the "grandfathered" authority of certain Federal savings banks pursuant to amended section 5(i)(4)(ii) of the HOLA, 12 U.S.C. 1464(i)(4)(ii).

#### Part 544

 In section 8 of the model charter for federal mutual associations as set forth in § 544.1, the language regarding "general reserves" has been eliminated as obsolete.

2. References to Charters B, K, L, and N in § 544.8 have been removed because they no longer serve any useful purpose. See § 544.8(a) (1988).

# Part 545

1. A new § 545.10 is being added by the transfer of former § 563.7–1 to this part. That section formerly dealt with the approval by the FSLIC of the form of accounts issued by Federal savings associations, pursuant to the authority formerly vested in the FSLIC by the NHA. With the dissolution of the FSLIC, this responsibility now rests with the Office. For ease of reference this section now appears with the other regulations relating to accounts offered by Federal savings associations.

2. Section 545.11 is being amended by adding a new paragraph (a) requiring all Federal savings associations to obtain FDIC insurance for their accounts or deposits before doing business or issuing accounts. This conforms to the new statutory structure for deposit insurance and the changes made to the charter approval standards discussed under part 543 above.

3. Section 545.12 is being amended by deleting former paragraphs (a) and (b) in conformance with the statutory modification of section 5(b)(1) of the HOLA, which no longer limits the persons from whom a Federal savings

association may accept demand deposits.

4. The requirement that Federal savings associations reserve the right to require a notice of withdrawal is being modified by revising paragraphs (a) and (b) of § 545.15 to replace a fourteen-day notice of withdrawal requirement with a seven-day notice of withdrawal requirement. This modification removes an ambiguity resulting from an inconsistency between this section and § 561.28 (formerly § 561.11f), § 561.29 (formerly § 561.11g), and § 563.7 (formerly § 563.3-1). See also § 563.6.

5. Section 545.19 (net worth certificates) is being modified to conform to 12 U.S.C. 1823(i), which FIRREA amended to require FDIC approval for the issuance of net worth certificates by depository institutions including Federal savings associations. Under the FDIA, such certificates may still count as capital of such Federal savings associations.

6. An obsolete cross-reference to disclosure requirements for home loans formerly located at § 545.33(f), which had been removed as of October 1, 1988, is being replaced in §§ 545.34 and 545.45 with a cross-reference to new § 563.99 (formerly § 563.9-9) where the currently applicable disclosure requirements appear.

7. Section 545.35(d), setting forth the percentage of assets limitations on loans secured by nonresidential real estate, is being amended to conform to section 5(c)(2)(b) of the HOLA, as amended.

8. Section 545.74 is being amended by adding a new paragraph (b)[7] to comply with 12 U.S.C. 1828[m], which requires 30 days notice to both the Office and the FDIC prior to the establishment or acquisition of any service corporation and 30 days notice to both the Office and the FDIC prior to the commencement of any new activity by a service corporation.

9. The statutory reference in § 545.75(a) is being modified to conform with new section 5(c)(2)(d) of the HOLA and a specific reference to the statutory limit on such investments has been added. Section 545.75(d) formerly set forth a one percent of assets limitation on a Federal savings association's investment in commercial paper and corporate debt not rated highly enough to warrant greater investment permissibility. See §§ 545.75(b)(1) and (2). This one percent of assets limitation is being amended to recognize the limitation/prohibition on new investments in these assets now contained in new section 28(d) of the Federal Deposit Insurance Act. The Office anticipates revisiting this

regulation for more substantive revisions in light of this statutory

10. Section 545.76(b) is being revised to include a specific reference to the statutory authority permitting Federal savings associations to invest in commercial paper and corporate debt securities which forms the basis for investment in open-end management investment companies that hold portfolios consisting of such assets.

11. Similarly to the service corporation regulation at § 545.74, the finance subsidiary regulation at § 545.82 is amended to conform to 12 U.S.C. 1828(m), which requires a savings association to notify both the Office and the FDIC not less than 30 days prior to the establishment or acquisition of any

subsidiary company.

12. Section 545.79 previously stated that Federal savings associations may purchase, sell, and pay interest or dividends in gold coins minted and issued by the United States Treasury only pursuant to Pub. L. No. 99-185. This section is amended to conform to a February 6, 1989 opinion by the Office of General Counsel of the Federal Home Loan Bank Board to the Chief Counsel of the United States Mint, Department of the Treasury, that under the regulation such associations may purchase, sell, and pay interest or dividends in any gold coin minted by the United States Treasury pursuant to Congressional directive. This amendment is intended to reflect the actual policy in effect on the date the FIRREA was enacted and thus to minimize the potential for confusion. Similar amendments are being made to §§ 563.27, 571.10 and new § 571.20 (formerly § 532.1).

13. Section 545.92(h)(1) is being modified to confirm that an existing association that converts to a Federal savings association may maintain its existing offices and a Federal savings association that acquires offices through merger or purchase of bulk assets may maintain those acquired offices unless the Office specifies otherwise in connection with its approval of the conversion, merger, or purchase of bulk

14. A new paragraph (g) is being added to § 545.121 providing that the indemnification requirements are subject to and qualified by 12 U.S.C. 1821(n). A conforming change is made to paragraph (b).

#### Part 546

A variety of changes are being made to the regulations governing mergers and transfers involving savings associations (part 546 and §§ 552.13, 563.22, and 571.5) to incorporate the provisions of

the Bank Merger Act, 12 U.S.C. 1828(c), and to eliminate redundancy within the merger regulations. Consistent with the foregoing, part 546 is being amended to eliminate procedural provisions that are duplicative of provisions that appear in § 563.22 and to ensure that the effective date of mergers of mutual associations is consistent with the timing specified in the Bank Merger Act. See § 546.2(g) and 12 U.S.C. 1828(c)(6).

The definition of the term "association" is also being replaced with a definition of the term "savings association" that conforms to section 2(4) of the HOLA. See § 546.1(a). Finally, the provision in § 546.2(d)(2) regarding approval of new offices acquired through merger is being removed since this matter is addressed by § 545.92(h). See discussion of part 545 above.

#### Part 551

This part has been removed and its provisions consolidated into new \$ 510.4.

#### Part 552

1. Section 552.2-1(b) is being modified to incorporate the charter approval standards set forth at section 5(e) of the HOLA and to provide that charter approvals shall be conditioned upon receipt of written confirmation of FDIC insurance of accounts.

2. Section 552.2-2(b), which sets forth the approval procedures for interim Federal stock associations, is also being revised to incorporate the charter approval standards set forth at section 5(e) of the HOLA, to the extent relevant.

3. Section 552.2-3, which provides for the issuance of charters in supervisory cases, is being revised to reflect the fact that such associations will now be proposed by the Office, the RTC, and the FDIC, instead of the FSLIC

4. To enhance clarity, references to Charters "S" and "T" are being replaced with references to "charters consistent with section 552" or "the charter of a Federal stock association." See, e.g., §§ 552.2-5, 552.2-6, and 552.8.

5. The provision in § 552.3, charters for Federal stock associations, authorizing Federal savings banks to "make any investment and engage in any activity as may be specifically authorized by action of the [Bank] Board" is being eliminated as obsolete. The Office does not have statutory authority to grant expanded powers to Federal savings banks.

6. Former § 552.9 has been removed since it was based upon obsolete distinctions between Federal stock associations in general and Charter N and Charter T associations.

7. Section 552.13 is being amended to eliminate procedural provisions duplicative of provisions that appear in § 563.22 and to ensure that the effective date of mergers and combinations of stock associations is consistent with the timing specified in the Bank Merger Act. See § 552.13(k) and discussion of part 546. In addition, the definition of the term "association" that appears in § 552.13(b)(1) is being revised to conform to the definition of "savings association" in section 2(4) of the HOLA.

### Parts 555 and 556

1. Former part 555, "Board Rulings" has been consolidated into part 556, "Statements of Policy-Federal Savings Associations".

2. Section 556.5, the policy statement on branching, is being amended in several respects. First, paragraph (a)(3)(i)(A)(3) is being modified to clarify that the ability of a Federal savings association to become a savings and loan holding company of a savings association located in another state is subject to section 10 of the HOLA (formerly Section 408 of the NHA) and the branching laws of the respective states, and not merely the branching policy statement. Second, paragraph (a)(3)(i)(E)(2) regarding the branching rights of Federal savings association subsidiaries of certain multi-state multiple savings and loan holding companies (i.e., holding companies with more than one savings association subsidiary located in different states) is being eliminated as obsolete. Third, paragraph (a)(3)(ii) is being modified to update the procedures and standards under which the Office may permit the establishment of a branch office by a Federal savings association in a state other than the state in which its home office is located in connection with a supervisory action initiated to facilitate the acquisition of a savings association that is in default or in danger of default. Fourth, the term "default" is being substituted for the term "failure" in paragraph (a)(3)(iv) to be consistent with the terminology of the FIRREA. Fifth, a new paragraph (a)(4) is being added to conform to the standards for branching by thrift subsidiaries of banks and bank holding companies established by section 13(k) of the FDIA or Section 408(m) of the NHA as in effect immediately prior to the enactment of the FIRREA. Finally, § 556.5(i), drive in and pedestrian offices, is being eliminated as duplicative of § 556.15.

# Parts 558 and 559

The Office's regulations governing the appointment of conservators and receivers and the conduct of conservatorship and receiverships for Federal savings associations, are being significantly modified and reduced from the former Bank Board regulations in these areas. The HOLA and FDIA as amended cover in detail matters formerly covered by parts 547, 548 and 549 of the Bank Board's regulations. The RTC and the FDIC will now be performing a number of the functions formerly performed by the FSLIC in these areas.

The contents of these former parts that remain within the Office's authority are either covered by new section 5(d)(2) of the HOLA or are being incorporated into parts 558 and 559. See new §§ 558.1, 558.6, 559.1, 559.2. Part 558 now covers procedures for conservatorships for Federal savings associations; part 559 now covers receivership procedures for Federal savings associations. Comparable regulations for state-chartered savings associations appear at parts 579 and

Conservators and receivers for Federal savings associations continue to have all powers granted to them by statute or otherwise. The Office may publish new regulations, consistent with new section 5(d)(3) of the HOLA, in the area of conservatorships and receiverships for public notice and comment.

# Part 561

- 1. A cross-reference to the definitions in part 541 is being added. The definitions of "insured institution," "insured member," "insured account," "trust estate," "independent activity," "all insured accounts," "premium," "primary reserve," and "secondary reserve" have been removed from part 561. These terms are no longer necessary due to the repeal of the statutory sections pertaining to insurance matters, which are now under the jurisdiction of the FDIC.
- 2. The statutory term "savings association" replaces the obsolete term "insured institution" in part 561 and its definition conforms to the statutory definition set forth at section 2(4) of the Act.
- 3. The definition of "financial institution" has been modified to track the definition of "depository institution" in section 3(c)(1) of the FDIA.
- 4. The definition of the term "deposit broker" now refers to the definition of that term in new section 29 of the FDIA.

5. The terms "accountholder", "BIF", "account," "Corporation", "Office", and "SAIF" are being added.

6. The definition of "checking account" that formerly appeared at § 561.11a is being modified to refer to "demand deposit accounts" and amended in accordance with the revision of section 5(b)(1) of the HOLA.

7. Obsolete cross-references in part 561 to definitions formerly appearing in part 526 for the terms "note account", "tax and loan account," and "United States Treasury General Account", "United States Treasury Time Deposit-Open Account" are being replaced with the definitions that formerly appeared in part 528

8. The definitions of the terms "bank" and "bank holding company" that appear in the definitional paragraph for "holding company affiliate" are being cross-referenced to the definitions of those terms in §§ 583.3 and 583.4, which in turn track the definitions of those terms in the Bank Holding Company Act of 1956.

#### Part 563

1. A number of sections in this part are being renumbered as set forth in the conversion table. This is being done in the interest of removing a large number of hyphenated section numbers that have resulted in some confusion.

Regulations governing the operation of savings associations in this part now are grouped more closely by subject matter.

2. New language referring to the limitations on dividends imposed by 12 U.S.C. 1828(b) is being added to new § 563.74(i)(2)(iv) (formerly § 563.7-4(i)(2)(iv))

3. In new § 563.75 (formerly § 563.7–5), a new paragraph (d)(1)(iii) is being added requiring that the form of stock certificate state or refer to a document stating the limitations on dividends imposed by 12 U.S.C. 1828(b), and the language of paragraph (d)(1)(iv) regarding payments on mandatorily redeemable preferred stock when an association is not meeting its regulatory capital requirements is being clarified.

4. New § 563.80(c) (former § 563.8(c)) is being amended to reflect the transfer to the FDIC of the insurance function for savings associations.

5. New § 563.81(d)(1)(i) (former § 563.8-1(d)(1)(i)) is being amended to insert a reference to the Office's ability to approve otherwise prohibited purchases of subordinated debt by savings associations and certain of their affiliates, thereby making this clause consistent with paragraph (d)(3). A new paragraph (d)(1)(v) is being added to require subordinated debt certificates to state the limitations on interest imposed

by 12 U.S.C. 1828(b). Paragraph (d)(1)(vi) prescribing the rights of holders of subordinated debt in the event of receivership is being revised to reflect the transfer of certain receivership authorities from the FSLIC to the FDIC and the RTC. (In addition, in paragraphs (vi)(A) and (B) the term "insured institution" is being replaced with "financial institution," consistent with the special definition of "insured institution" that formerly appeared in paragraph (vi)(d). Because of this change, paragraph (vi)(d) is no longer needed and has been removed.)

6. Former § 563.9(a) has been removed since FIRREA does not carry forward the geographic lending restrictions that were contained in section 403(b) of the NHA. The title of the regulation (now § 563.90) is being changed to reflect its remaining provisions on appraisals on out-of-area loans.

7. New § 563.93 (former § 563.9-3) is being amended to include a specific cross-reference to the new statutory loans-to-one borrower provisions located in section 5(u) of the HOLA. That self-executing section sets forth several limits, to include a new general limitation and a special limitation for certain real estate loans. It also permits the Office to impose more stringent restrictions. The Office anticipates revisiting this section in the near future to determine the substantive revisions necessary in light of this statutory change. Pending issuance of those revisions, a Thrift Bulletin will be issued by the Office to define a "safe harbor" for loans that comply with both the current OCC regulations on loans to one borrower and the limitations under § 563.93, to the extent the latter impose a more stringent standard.

8. New § 563.98(f)(4) (formerly § 563.9-8(f)(4)) is being modified by adding language clarifying the treatment of debt securities issued by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under this regulation, which covers equity-risk investments. This change was discussed in the preamble to the Bank Board's recent amendment to this regulation, but was inadvertently omitted from the regulatory language.

9. The classification of assets regulations formerly located at 12 CFR 561.16c are being moved from that definitional part and renumbered as \$ 563.160 for convenient reference to the related regulations appearing at new \$ \$ 563.161 through 563.172.

10. Section 563.171(c)(iv) (formerly § 563.17-1(c)(iv)) is being modified to include a cross-reference to the requirements of new § 563.172 (formerly

§ 563.17-la) in the appraisal requirements for records with respect to loans secured by real estate. This technical conforming change replaces an incomplete and potentially misleading statement of the appraisal requirements of § 563.172.

11. Paragraph (e) of former § 563.18-3, penalties for violations, is being eliminated. That section is being renumbered as § 563.183. Violations of new §§ 563.181 (formerly § 563.18-1) and 563.183 will be subject to the penalties provided in the Home Owners' Loan Act, as amended, and in the Federal Deposit Insurance Act, as amended.

12. As noted above in the discussion of part 546, a number of changes are being made to the regulations governing mergers and transfers involving savings associations to incorporate the provisions of the Bank Merger Act, 12 U.S.C. 1828(c), and to eliminate redundancy within the merger regulations. Consistent with the foregoing, § 563.22 is being amended by adding to paragraph (d) a provision for public notice, notice to the Attorney General, the OCC, the Board of Governors of the Federal Reserve System, and the FDIC, and a 30-day waiting period to consummate any merger transaction after receipt of the approval of such transaction by the Office. Former paragraphs (e) and (f) are being reorganized and then combined into one new paragraph (e). Former paragraph (h) is being redesignated accordingly. New paragraph (g) combines the definitions that formerly appeared in § 563.22(e)(2) and (g). Some of the filing procedures formerly contained in § 552.13 are also being consolidated into § 563.22.

13. The first two sentences of § 563.24 are being revised to reflect the transfer of the insurance function to the FDIC. The obligation to provide information to the Office about sales plans and giveaways will now be triggered either by the filing of a charter application with the Office (in the case of an organizing Federal savings association) or the filing of an insurance application with the FDIC (in the case of a state savings association seeking Federal insurance of its accounts).

14. Section 563.27 now contains both the advertising provisions previously located in this section (new § 563.27(c)) and those formerly appearing at part 528 (new § 563.27(a), (b)). The former definitional section of former part 526 is being incorporated into part 581.

15. Paragraph (b) of § 563.33 is being removed as obsolete. Former paragraph (c) is being redesignated as paragraph (b).

16. Section 563.37 has been modified by adding a new paragraph (c) requiring that all savings associations must notify the Office and the FDIC not less than 30 days prior to the establishment or acquisition of any service corporation and not less than 30 days before commencing any new activity through a service corporation. This requirement was added by the FIRREA addition to the FDIA of section 28(m), 12 U.S.C. 1828(m).

17. Sections 563.41(a) and 563.43(a) are being modified to clarify that transactions subject to those sections are also subject to new Section 11 of the Home Owners' Loan Act. Section 563.43 is also being modified to reflect that, notwithstanding the prohibitions on the purchase of third-party loans from affiliated persons contained therein, purchases of third-party mortgage loans from an affiliate that are permissible under 12 CFR 250.250 will not be prohibited.

18. Section 563.44 is being amended to reflect that the terms "consolidated net worth" and "consolidated net earnings" are no longer defined in the Office's regulations. Instead, reference is made to the meaning of those terms under generally accepted accounting principles.

19. The flood insurance provisions formerly located at \$ 523.29 have been moved to § 563.48. They have been further modified to reflect a previous statutory change in authority under this act from the Department of Housing and Urban Development to the Federal **Emergency Management** Administration.

20. Section 563.132(c) (formerly § 563.13-2(c)) is being revised by adding the requirement that the FDIC, as well as the District Director, be notified when a savings association establishes, transfers additional assets to, or issues securities through a finance subsidiary, in conformance with 12 U.S.C. 1828(m).

#### Part 563a

Former part 563a is being redesignated as part 568.

# Part 563b

1. Definitions of "BIF," "SAIF," "FDIC," "District Director," "savings association," and "Office" are being added to \$ 563b.2. The definitions of "insured institution" and "Corporation" are being removed. Statutory citations are being revised as appropriate to reflect changes made by FIRREA. The titles of the officials to whom authority is delegated for purposes of part 563b are being updated. See §§ 563b.8(w), 563b.28(c), 563b.40(b), and 563b.41(c).

2. Paragraph (d)(14), "Summary Proxy Statement," of § 563b.3 is being eliminated as duplicative of § 563.6(c)(2), "Summary Proxy Statement." The exception from paragraphs (i)(1)-(3) of § 563b.3 set forth in paragraph (i)(5)(v) of § 563b.3 is being amended to clarify that the exception applies to the acquisition of securities of an association or holding company thereof by any one or more tax-qualified employee stock benefit plans of such association or holding company. In addition, paragraph (i)(5) of § 563b.3 is being renumbered as paragraph (i)(4) because of the elimination of current paragraph (i)(4) of § 563b.3 as obsolete. The penalty provision for willful violations of § 563b.3(i), which appears in \$ 563b.3(i)(9), is being eliminated as obsolete; violations of \$ 563b.3(i) will be subject to the penalties provided in the FDIA and the HOLA.

3. Procedura1 requirements concerning the surrender to the FSLIC for amendment or cancellation of the certificate of insurance of a converting insured institution and the issuance of a new or amended certificate of insurance by the FSLIC to the converted institution are being eliminated as obsolete. See §§ 563b.8(d)(1), 563b.28(d)(1), and

563b.41(d)(1).

4. References to "Charter S" and "Charter T" are being eliminated as obsolete; replacement language refers to a form of charter and bylaws "consistent with the provisions of part 552." See, e.g., §§ 563b.8(d)(2), 563b.28(d)(2), 563b.41(d)(2), Item 9 of Form AC of § 563b.100, and exhibit 3(d) of Form AC of § 563b.100.

5. The reference in § 563b.8(r) to filings with the "Office of the Secretary of the Board" is being eliminated and replaced by a reference to filings "received by the Office in the manner

prescribed in part 563b."

6. The provisions concerning the contents of applications for voluntary supervisory stock conversion and modified conversion are being amended to require submission of a copy of any application for insurance of accounts submitted to the FDIC. See §§ 563b.27(k) and 563b.39(k).

7. References to the Financial Accounting Standards Board's Statement of Financial Accounting Standards "No. 33" are being updated to refer to Statement of Financial Accounting Standards "No. 89." See Instruction 3 to Item 7(b) of Form PS of § 563b.101 and Instructions 7 and 8 to Item 7(c)(1) of Form PS of § 563b.101.

8. Item 14, "Financial Statements," of Form PS of § 563b.101 is being updated to refer to a "Statement of Cash Flows"

instead of a "Statement of Changes in Financial Position."

9. The reference to "§ 523.10" (liquidity regulations) in instruction 5 to Item 7(c)(1) of Form PS of § 563b.101 is being deleted and replaced by a reference to "the liquidity regulations of the Office.'

10. Item 7(f), "Business of applicant-Federal regulation," of Form PS of § 563b.101 is being updated to require descriptions of (1) the general regulatory authority of the FDIC; (2) the assessment authority and requirements of the FDIC. the RTC, the Financing Corporation, and the Office; and (3) applicable Federal and State liquidity requirements.

11. The following obsolete provisions are being eliminated: §§ 563b.3(b)(2): 563b.3(d)(2); 563b.3(i)(4); 563b.3(j); 563b.7(f)(3); 563b.8(w)(1); and the last

sentence of § 563b.8(w)(2).

#### Part 563c

1. References to "scheduled items" are being replaced by references to "classified assets" where appropriate. See, e.g., Item i.8.(j)(ii) in § 563c.101. Citations to the regulations of the Securities and Exchange Commission are being updated. See, e.g., Item i.8.(j)(iii) of § 563c.101.

2. The obsolete reference to prepayments into the secondary reserve in Item I.12. of Section 563c.101 is being removed. Item III. of Section 563c.101 is being updated to refer to a "statement of cash flow" instead of a "Statement of Changes in Financial Position."

# Part 563d

Section 563d.1 is being amended to reflect the transfer of securities jurisdiction over savings associations from the Board to the Office, to preserve the right of the Office to impose filing fees at some future date, and to clarify and simplify the use of certain terms.

# Part 563f

1. Section 563f.2(f)(1) is being conformed to 12 U.S.C. 3201(4) by adding language exempting advisory and honorary directors of institutions with less than \$100 million in assets from the definition of "management official." Paragraph (k) adds the definition of "savings association", as set forth in section 2(4) of the HOLA and 3(b)(1) of the FDIA, to this part.

2. Section 563f.4(a) is being conformed to 12 U.S.C. 32040 (7), (8), and (9) by adding the exemptinns provided there for interlocks involving (i) diversified savings and loan holding companies, (ii) depository organizations in danger of closing, and (iii) savings associations or savings and loan holding companies that have issued stock in connection with a

qualified stock issuance. See § 563f.4(a) (7), (8), and (9). A new paragraph (c) is added to conform to 12 U.S.C. 1823(k)(1)(a)(v), as added by FIRREA, which provides a ten-year exemption for interlocks approved by the FDIC in connection with supervisory transactions conducted pursuant to 12 U.S.C. 1823(k). Paragraph (d) is being conformed to 12 U.S.C. 3205(b) by extending the time period of the exemption provided therein to 1993.

3. Section 563f.5 is being conformed to 12 U.S.C. 3205(a) by extending the time period of the exemption provided therein to 1993.

4. The delegations of § 563f.7 are being expanded to encompass the new exemptions provided for in § 563f.4(a) (7), (8), and (9). See Item 1(b) above. Filing instructions for notices filed pursuant to those exemptions are also being added to § 563f.7.

5. Statutory and regulatory citations are being modified as necessary to reflect the changes required by FIRREA. See, e.g., § 563f.2(k) and 563f.4(d).

#### Part 563g

1. A definition of "savings association" that conforms to Section 2(4) of the HOLA is being added to § 563g.1. The definition of "insured institution" is being removed.

2. Obsolete exceptions from the offering circular requirements are being deleted as no longer necessary. See

3. Statutory citations are being revised as appropriate to reflect changes made by FIRREA. Language is also being added to Section 563g.10 to clarify that the prohibited practices listed in that section will constitute a violation of that section, as well as constituting an unsafe and unsound practice.

4. The titles of the officials to whom authority is delegated for purposes of Part 563g are being updated. See § 563g.22.

# Part 566

1. The liquidity regulations, including definitions, requirements, and provisions for deficiencies and penalties, formerly located at §§ 523.10 through 523.14 are being moved into this new Part to reflect the transfer of the statutory basis for these regulations from the Federal Home Loan Bank Act to the HOLA.

2. New § 566.1(g)(3) (iv) and (v) are being revised to reflect the new structure of the Farm Credit System.

3. New §§ 566.3 and 566.5 are being further revised to indicate that reports on penalties under this Part are now to be filed with, and the penalties paid to, the Office, rather than to a Federal Home Loan Bank.

#### Part 567

- 1. New part 567 contains the Office's capital regulations. This Part includes both former Board regulations previously located at §§ 563.14, 563.14-1 and 563.47, and the recent capital rule published by the Office in the Federal Register on November 8, 1989 (54 FR 46845) pursuant to the requirement of section 5(t) of HOLA. Both are incorporated here in full text for ease of
- 2. The capital forbearance provisions formerly set forth in § 563.47 (new § 567.20) are being amended to reflect FIRREA's repeal of the capital forbearance provisions formerly found in section 10 of the HOLA (12 U.S.C. 1467a) and section 416 of the NHA (12 U.S.C. 1730i). The FIRREA grandfathers forbearances that had already been granted pursuant to these specific statutory provisions prior to FIRREA's enactment, subject to the savings association's continued reporting to the OTS and adherence to the capital plan adopted under those provisions. Hence, the new regulation deletes the old regulation's provisions relating to applications for, and approval of requests for capital forbearances. The revised section retains, with appropriate modifications, only those provisions in the old rule that relate to capital plan reporting and administration, as well as the provisions relating to the potential termination of existing capital forbearances.

- 1. Section 569.2 is being amended to eliminate the obsolete date that appears in the first sentence.
- 2. Paragraphs (b) and (c) of § 569.3 regarding prohibitions against corporations and partnerships holding proxies in Federal savings associations, are also being removed as obsolete.

# Parts 570 and 571

1. Former part 570, "Board Rulings" has been consolidated into part 571, "Statements of Policy," and the sections of that part carried forward by the Office now appear in part 571 as new §§ 571.20, 571.21, 571.22, and 571.23. Former § 570.3 has been removed as obsolete as it dealt with a regulation, § 563.11, that was removed several years ago.

2. Section 571.1 (appraisals of real estate securing assets of savings associations) is being modified by removing the word "professional" and referring simply to "appraisers" in order to remove the inadvertent ambiguity arising from inconsistent terms.

3. Section 571.5(b)(3), which deals with the antitrust considerations in connection with mergers and transfers of assets and liabilities, is being amended to conform to the specific language of section 18(c)(5) of the FDIA. Similarly, paragraph (c) is being amended to track the "future prospects" language of section 18(c)(5) of the FDIA. Former paragraph (f) has been deleted from the section and paragraphs (g) through (k) redesignated accordingly.

4. Section 571.6 is being revised to apply only to applications for de novo Federal charters and no longer to apply to applications for FSLIC insurance of accounts for de novo state-chartered institutions. Paragraph (a)(2) of the section is being deleted as obsolete. Paragraphs (b)(1) and (2) of § 571.6 are being modified to delete references to the approval standards of the NHA and to incorporate the approval factors of

section 5(a)(2) of the FDIA.

Section 571.10 previously stated that state-chartered savings associations may purchase, sell, and pay interest or dividends in gold coins pursuant to those charters, but that such activities would be closely monitored by supervisory personnel. The policy statement granted specific approval, however, to transactions involving gold coins minted and issued by the United States Treasury pursuant to Pub. L. No. 99-185 only. This section is amended for the same reasons set forth in the discussion of § 545.79. The section is also amended by changing the reference to Title IV of the NHA to Section 4 of the HOLA.

6. The reference to "applications for approval of holding company indebtedness" in § 571.12(a) is being eliminated as no longer needed due to the repeal of the referenced statutory provision. See the discussion of holding company indebtedness in part 584. The references in § 571.12(a) to requests for FSLIC assistance or assistance payments in connection with an application for merger, acquisition, or restructuring of an insured institution and to requests "in connection with [FSLIC] authorizations of emergency thrift acquisitions" are being replaced by a reference to applications or requests related to transactions pursuant to sections 13(c) or (k) of the Federal Deposit Insurance Act. The references in § 571.12(f) to the Executive Director and the Executive Director for Policy are being eliminated as no longer

7. Former § 532.1 (payment in gold or its equivalent) is being redesignated as § 571.17. References to "members" (of

the Federal Home Loan Banks) are being changed to refer to "savings associations". This section is also being amended in the same manner as \$ 545.79, discussed under part 545, above.

8. Former § 570.7 (payment for appraisals) now appears as new § 571.20. The reference to the NHA is being modified to refer to section 5(d) of the HOLA and Section 8 of the FDIA. The former reference to "Chief Examiner" now refers to the District Director.

9. Former § 570.11 (most favored lender status) now appears as new § 571.22. Statutory references in that section are being modified to refer to new section 4(g) of the HOLA, which covers this area.

#### Part 574

1. Citations are being modified as necessary to reflect the transfer of provisions from the NHA to the HOLA or FDIA. Thus, for example, citations to 12 U.S.C. 1730a are being changed to section 10 of the HOLA and citations to 12 U.S.C. 1730q are being changed to 12 U.S.C. 1817(j). See, e.g., § 574.1.

2. Definitions of "savings association," "uninsured institution," "Office" (i.e., the Office of Thrift Supervision), "Director" (i.e., the Director of the Office of Thrift Supervision), "District Director", "BIF" (i.e., the Bank Insurance Fund), "SAIF" (i.e., the Savings Association Insurance Fund), and the "Repealed Control Act" (i.e., 12 U.S.C. 1730(q)) are being added to § 574.2; the definition of "insured institution" is being removed; and technical modifications are being made to the definitions of "company" and "stock."

definitions of "company" and "stock." 3. Section 574.3(a) and (b) are being revised (i) to reflect the new statutory provisions allowing officers, directors, and control persons of savings and loan holding companies to acquire control of any savings association not a subsidiary of such savings and loan holding company upon written approval by the Office of an application, and (ii) to reflect the new acquisitions which are allowed for savings and loan holding companies of qualified stock issuances by undercapitalized savings associations or holding companies. A new exemption is also being added at § 574.3(c)(2)(v) for acquisitions of stock of a de novo Federal savings association in connection with the organization of that Federal savings association, and § 574.3(e) (prohibited acquisitions) is being updated to conform to HOLA section 10(e)(3).

4. References to the Federal Home Loan Banks are being replaced with references to the District Directors. E.g., § 574.6(b)(1)(ii) and (d)(2).

5. Language is being added to §§ 574.6 and 574.7 to clarify that acquisitions by companies involving mergers, including mergers with interim associations must comply with the requirements of both part 574 and the merger regulations of the Office, since the merger regulations are now based upon the Bank Merger Act. See §§ 574.6(i) and 574.7(b). Language is also being added to § 574.3(b) to clarify that acquisitions of savings associations by persons by means of mergers with interim associations will be subject to the merger regulations, but not part 574. See 12 U.S.C. 1817(j)(17).

6. Provisions are being added to \$ 574.6(b)(1)(iv), (v), and (vi) to require submission of additional copies of certain applications and notices to the Office for distribution by the Office to the other Federal banking agencies and the Attorney General in accordance with 12 U.S.C. 1467a(e)(2), 1817(j)(11), and 1828(c)(4). In addition, \$ 574.6(c)(3)(ii) is being amended to set forth each of the statutory bases for 45-day extensions of the time period during which notices of change of control may be disapproved. See 12 U.S.C. 1817(j)(1).

7. Section 574.7(d) is being expanded to include the new sixth criterion for disapproving notices of change of control, i.e., adverse impact on the BiF or SAIF. See 12 U.S.C. 1817(j)(7). Parenthetical language is being added to § 574.7(g)(1)(iii) to clarify that service at the request of the Office (or any other Federal banking agency) as a management official or director for a savings association that goes into receivership or conservatorship is not intended to constitute a presumptive disqualifier.

8. A new § 574.8 provides definitions and procedures for qualified stock issuances by undercapitalized savings associations and holding companies.

9. Former § 574.8 is being renumbered as § 574.9 and revised to clarify and expand the scope of the delegated authority of the District Directors (in place of the Principal Supervisory Agents) and of the Office's Washington staff.

# Parts 579 and 580

These parts deal with conservatorship procedures and receivership procedures, respectively, for state-chartered savings associations where the Director has appointed a conservator or receiver. Comparable regulations for Federal savings associations are located in parts 558 and 559.

Conservators and receivers for statechartered savings associations continue to have all the powers granted to them by statute or otherwise. The Office contemplates revisiting this area in a future rulemaking, after reviewing the new statutory provisions added by the FIRREA.

# Part 583

1. The Qualified Thrift Lender ("QTL") provisions previously set forth in § 583.27 are being moved to new § 584.6. See § 584.6(a) and (a)(4). A brief definition of the term "Qualified Thrift Lender," which merely cross references new § 584.6, is being retained in part 583

at § 583.17

2. The definitions of "consolidated debt service," "consolidated net earnings," "consolidated net income available for interest," "consolidated net worth," "debt security," and "outstanding debt" are being removed from part 583. These are terms that were used in old §§ 584.5, 584.6, and 584.8, which are being repealed today to conform to the repeal of the statutory sections to which they relate. See below. Other obsolete terms being removed from Part 583 include "Board," "Supervisory Agent," and "insured institution."

3. New definitions of the following terms are being added to part 583: "bank holding company," "BIF," "District Director," "Office," "SAIF," and "savings association." In addition, technical modifications are being made to the definitions of "company," "diversified savings and loan holding company," "subsidiary", and "uninsured institution."

4. The definition of "bank" is being amended so as to refer to commercial banks, rather than the Federal Home Loan Banks; and the definition of "Corporation" is being amended so as to refer to the FDIC, rather than the FSLIC.

5. All definitions in part 583 are being alphabetized.

### Part 584

1. References to the Federal Home Loan Banks are being replaced with references to the District Directors. E.g.,

§ 584.1(e).

2. Section 584.2(b) (activities restrictions) is being amended to conform to section 10(c) of the HOLA. In addition, former paragraph (c) of § 584.2 (regarding activities of service corporations of savings association subsidiaries of savings and loan holding companies) is being moved to § 584.2a(d), and a new paragraph (c) is being added to § 584.2 that incorporates the provisions of section 10(e)(4)(B) of the HOLA, which subjects savings and

loan holding companies controlled by certain individuals who control more than one savings association to the activities restrictions of section 10(c) of the HOLA.

3. Paragraphs (a) and (b) of § 584.2a, which carves out certain exceptions to the activities restrictions of § 584.2(b), is being amended to make reference to acquisitions of savings associations made pursuant to amended section 13(c) of the FDIA and new section 13(k) of the FDIA, consistent with section 10(c) of the HOLA. Reference to acquisitions made under former section 408(m) of the National Housing Act is also retained, consistent with section 10(c) of the HOLA. (Although section 10(c) of the HOLA fails to mention former section 406(f), such reference apparently was viewed as unnecessary due to the reference to section 13(c) in section 10(c).) A new paragraph (e) is also being added to § 584.2a to provide an exemption for bank holding companies that are also savings and loan holding companies. See section 10(c)(8) of the HOLA.

4. The transactions-with-affiliates provisions of Section 584.3 are being replaced with a cross-reference to new

HOLA Section 11.

5. Section 584.4 (prohibited acquisitions) is being amended to conform to section 10(e)(1)(A)(iii) of the HOLA.

8. Section 584.5-1 (relief from restrictions on payment of dividends) is being removed since it is obsolete.

Section 584.6 (holding company indebtedness) and § 584.7 (payment of dividends to diversified savings and loan holding companies) are being repealed since the statutory authority for these provisions, 12 U.S.C. 1730a(g), was repealed by FIRREA. Former paragraph (e) of section 584.1 (designation of principal state by multiple holding companies) is also being repealed since the Competitive Equality Banking Act of 1987 ("CEBA"), Pub. L. 100-86, 101 Stat. 552, eliminated the statutory basis for this provision.

8. The qualified thrift lender ("QTL") test previously set forth in § 583.27 is being moved to new § 584.6 and a brief definitional cross-reference retained in § 583.17. The existing regulation is retained in its entirety except for two provisions. Old subsection (a)(4) regarding the 5-year disqualification period is being deleted because it has been rendered obsolete by the FIRREA. The special phase-in for certain savings banks in § 584.6(a)(7) is being revised to reflect changes instituted by FIRREA that are effective immediately. See FIRREA section 302; Section 10(m)(6). The new statutory consequences of

failure to maintain QTL status, 12 U.S.C. 1467a(m)(3), effective one year after the date of FIRREA's enactment, are being included in § 584.6(c). Paragraph (b) is being added to reference other statutory provisions.

9. Section 584.8 (computation of diversified savings and loan holding company status) is being repealed as unnecessary. The definition of "diversified savings and loan holding company," set forth in new § 583.11, merely specifies that an association's diversified status is to be computed in accordance with generally accepted accounting principles.

10. Section 584.9 (management interlocks) is being amended to conform to section 10(h)(2) of the HOLA.

- 11. Section 584.10(c) and (d) (application forms for transactions with affiliates and holding company debt) are being repealed as obsolete. See discussion above of §§ 584.3 and 584.6.
- 12. Former § 585.2, hearings, is being redesignated as new § 584.11.

#### Part 585

Section 585.1 (authority to amend parts 583 through 588) is being repealed as superfluous.

#### Part 588

Section 588.1 (gold related activities by multiple holding companies) is being repealed because it was rendered obsolete by CEBA.

# Administrative Procedure Act

No new substantive regulations are being adopted that are not made necessary by changes in the statutory authority pursuant to which the Office will operate. The Office finds that in the interest of the continuity of regulatory authority in these areas and the absence of any additional burden on the public by the readoption of such regulations there is good cause for waiving the notice and comment and delay of effective date provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. 553, for these regulations. Because this recodification contains no substantive changes the Office promulgates this final rule as a matter of agency organization and management and therefore for good cause shown under 5 U.S.C. 553(a)(2) and (b)(B) is exempt from the notice and comment requirements of the APA and the 30-day delay of the effective date pursuant to 5 U.S.C. 553(d)(3).

# Executive Order 12291

This revision of 12 CFR Chapter V does not fall within the scope of Executive Order 12291 as it is being

done as a matter of agency organization and management by the Office. As set forth above, the revisions made to the former Bank Board regulations are

limited to (1) nomenclature and organizational changes and (2) revisions mandated by changes in statutory

authority. No agency discretion has been exercised.

# Regulatory Flexibility Act

Because no notice of proposed rulemaking was required for this rulemaking the Regulatory Flexibility Act does not apply. The following distribution table is provided for reader reference and shows the relationship of former section numbers within chapter V to the new section numbers.

Previous section	Previous title	New section	New title
PART 500		PARTE BUA	
500.1	General statement and statutory authority	500.1	General statement and statutory author
500.0	The Federal Home Lean Back meters	Removed	ity.
500.2	The Federal Home Loan Bank system	500.3	The Federal savings association system
500.3	The Federal savings and loan system	Removed	The reucial savings association system
500.4	The Federal Savings and Loan Insurance Corporation	Control of the Contro	Constitution and constation of entire
		500.4	Supervision and regulation of saving associations.
500.5	District of Columbia savings and loan associations	500.5	District of Columbia savings associa
			tions.
500.6	General statement concerning gender-related terminology	500.6	General statement concerning gende related terminology.
500.10	The Board	Removed	
000.10	THE DOUG	500.10	The Office.
500.11	Secretary to the Board.	500.11	Secretary to the Office.
500.12	Congressional Liaison Officer	500.12	Senior Deputy Director for Congression
300.12	Congressional Daison Onicol		Relations and Communications.
500.13	Director of the Office of Management Systems and Administration	500.13	Senior Deputy Director for Managemen
500.14	Director of the Office of Economic Research	500.14	Chief Economist.
500.15	Director of the Office of Enforcement.	Removed	Childr Edditchilate
	Director of the Office of Communications	Removed	the state of the s
500.16		500.17	The Chief Counsel.
500.17	The General Counsel		The Chief Counsel.
500.19	Director of the Office of District Banks	Removed	C-1- D-1- D-1- 4- C
		500.19	Senior Deputy Director for Supervisio
			(Operations).
500.20	Director of the Office of the Federal Savings and Loan Insurance Corporation	Removed	
		500.20	
			(Policy).
500.22	Director of the Office of Housing and Urban Affairs	Removed	
500.30	General statement concerning procedures and forms	500.30	
100 m			dures and forms.
500.31	Forms		
500.32	Offices of the Board; information and submittals	500.32	Offices of the Office of Thrift Superv
			sion; information and submittals.
500.40	Director of the Office of the Federal Savings and Loan Insurance Corporation	Removed	and the state of t
PART 501			
501.1	Claims of the Board and the Federal Savings and Loan Insurance Corporation	Removed	
501.2		Removed	
	Assessments	Removed	THE REAL PROPERTY AND ADDRESS OF THE PARTY.
501.10	Officers as agents	Removed	THE RESERVE THE PARTY OF THE PA
501.11	Designation of principal supervisory agent and supervisory agents	Tierroved	
PART 502			and the state of t
		502.1	Interim assessments and fees.
PART 505			
505.1	Basis and scope	505.1	Basis and scope.
505.2	Definitions	Removed	The state of the s
A SHOW AND A SHOULD NOT A SHOULD BE AND		505.2	Public reading room.
505.3	Published Information	Removed	The second secon
			Requests for records.
	1 3010100 11101111111111111111111111111	505.3	
505.4		505.3 Removed	
	Access to records	Removed	Administrative appeal of initial determ
505.4		District of the control of the contr	
	Access to records	Removed	Administrative appeal of initial determination to deny records.
		Removed	nation to deny records.
505.5	Access to records	Removed	
505.5	Access to records	Removed	
505.5	Access to records	Removed	nation to deny records.
505.5	Access to records	Removed	nation to deny records.
505.5	Access to records	Removed	nation to deny records.  Delivery of process.
505.5	Access to records	Removed	nation to deny records.  Delivery of process.  Scope and procedures.
505.5	Access to records	Removed	nation to deny records.  Delivery of process.  Scope and procedures.
505.5 505.8 PART 505a 505a.1 505a.2 505a.3 505a.4	Access to records	Removed	nation to deny records.  Delivery of process.  Scope and procedures.
505.5	Access to records	Removed	nation to deny records.  Delivery of process.  Scope and procedures.
505.5	Access to records	Removed 505.4 PART 503 S03.1 Removed	nation to deny records.  Delivery of process.  Scope and procedures.
505.5	Access to records	Removed	nation to deny records.  Delivery of process.  Scope and procedures.
505.5	Access to records  Information not disclosed  Subpoenas  Purpose and scopa  Definitions as used in this part 505a  Procedures or requests pertaining to individual records in a record system  Times, places, and requirements for identification of individuals making requests  Disclosure of requested information to individuals  Special procedures for medical records	Removed	nation to deny records.  Delivery of process.  Scope and procedures.
505.5	Access to records	Removed 505.4 PART 503 S03.1 Removed	nation to deny records.  Delivery of process.  Scope and procedures.
505.5	Access to records  Information not disclosed  Subpoenas  Purpose and scopa  Definitions as used in this part 505a  Procedures or requests pertaining to individual records in a record system  Times, places, and requirements for identification of individuals making requests  Disclosure of requested information to individuals  Special procedures for medical records	Removed	nation to deny records.  Delivery of process.  Scope and procedures.

Previous section	Previous title	New section	New title
05a.13	Exemptions of records containing investigatory material compiled for law en-	Removed	
0002.70	forcement purposes.		
PART 505b			THE RESERVE AND ADDRESS OF THE PARTY OF THE
	Queens and some	Demouad	
5b.1	Purpose and scope	Removed	
5b.3	Open meetings	Removed	
5b.4	Exemptions	Removed	
5b.5	Closed meetings	Removed	
5b.6	Public announcements of meetings	Removed	
5b.7	Accommodation for public attendance at open meetings	Removed	
PART 505c		PART 504	
	Dumosa and scane	504.1	Durance and econe
5c.1	Purpose and scope	504.2	Purpose and scope. Policy.
5c.3	Administration of program	504.3	Administration of program.
5c.4	Mandatory review procedure	504.4	Mandatory review procedure.
PART 505d			
5d.1	OMB control numbers assigned pursuant to the Paperwork Reduction Act	Removed	
PART 506		. PART 910	
6.1	Issuance of consolidated bonds	Removed	(FHFB-910.1).
8.2	Form of consolidated bonds	Removed	(FHF8-910.2).
6.3	Transactions in consolidated bonds.	Removed	A SOURCE DESCRIPTION OF THE PROPERTY OF THE PR
8.4	Lost, stolen, destroyed, mutilated, or defaced bonds	Removed	(FHF8-910.4).
8.5,	Administrative provision	Removed	(FHFB-910.5).
6.6	Reservation of right to revoke or amend; limitation thereon	Removed	The state of the s
PART 506a		PART 912	
	Defettion of towns	100000000000000000000000000000000000000	(FUED 040 4)
6a.1	Definition of terms	Removed	(FHFB-912.1).
8a.2	Authority of Reserve Banks.	Removed	(FHFB-912.2).
6a.3	Scope and effect of book-entry procedure	Removed	NOON TO SELECT ON THE PROPERTY OF THE PARTY
5a.4 5a.5	Transfer or pledge	Removed	(FHFB-912.4). (FHFB-912.5).
3a.6	Delivery of Federal Home Loan Bank Securities	Removed	The state of the s
8a.7	Registered bonds and notes	Removed	(FHFB-912.7).
6a.8	Servicing book-entry Federal Home Loan Bank securities; payment of interest;	Removed	(FHFB-912.8).
	payment at maturity or on call.	* TOTTO YOU MAN THE MAN THE	Din B-Stray.
)6a.9	Obligation of United States with respect to Federal Home Loan Bank securities	Removed	(FHFB-912.9).
PART 507			
		-	
07.10	Hearings on regulations for Federal Home Loan Banks	Removed	
07.11	Recommendations and representations at hearings by	Removed	
PART 508			
8.10	Reservation of right to amend	510.2(a)	Amendments.
08.10-1	Waiver or relaxation of regulatory provisions with respect to disaster or emer-	510.2(b)	
	gency areas.	- Constitution of the Cons	sions with respect to disaster or en
1400000		THE RESERVE OF THE PARTY OF THE	gency areas.
8.11	Amendments of regulations without notice	Removed	
8.12	Notice of proposed amendments or regulations not within § 508.11	Removed	
8.13	Participation of interested persons in a proposed amendment or rule	510.2(c)	Bar on participation in notice and co
			ment rulemaking by suspended or
0.44		2	barred persons.
8.14	Effective dates of amendments and rules	Removed	
8.15	Repeal of rules and regulations	Removed	
8.16	Coordination of subchapters	510.3	Coordination of subchapters.
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9.1	Scope of regulations	509.1	Scope of regulations.
9.2	Definitions	509.2	Definitions.
9.3	Appointment of Administrative Law Judge	509.3	Appointment of Administrative I
			Judge.
9.4	Authority of the Administrative Law Judge	509.4	Authority of the Administrative I
9.5	Appropriate and provides to and discretization of	EOO E	Judge.
9.5	Appearance and practice in adjudicatory proceedings	509.5	Appearance and practice in adjudica
9.6	Good faith certification	500 g	proceedings.
9.7	Ex parte communications	509.6	Good faith certification.  Ex parte communications.
9.8	Maintenance of the record	509.8	Maintenance of the record.
9.9	Service	509.9	Service.
9.10	Filing of papers	509.10	Filing of papers.
9.11	Formal requirements as to papers filed	509.11	Formal requirements as to papers fi
9.12	Computing time	509.12	Computing time.
9.13	Notice	509.13	Notice.
9.14	Answer	509.14	Answer.
9.15	Amending pleadings	509.15	Amending pleadings.
9.16	Consolidation and severance of proceedings	509.16	Consolidation and severance of
0.47		nes with morals	ceedings.
9.17	Motions	509.17	Motions.
	Interlocutory review	509.18	Interlocutory review.
9.19	Prehearing conference and exchange of information	509.19	Prehearing conference and exchange

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509.20	Discovery	509.21	Discovery.
509.21	Subpoenas for documentary or physical evidence or for witness attendance	509.22	Subpoenas for documentary or physica
003.22	outpostas for documentary or physical students or for transco strength		evidence or for witness attendance
609.23	Depositions	509.23	Depositions.
509.24	Conduct of hearings	509.24	Conduct of hearings.
509.25	Private and public hearings.	509.25	Private and public hearings.
509.26	Summary disposition	509.28	Summary disposition.
509.27	Proposed findings of fect and conclusions of law	509.27	Proposed findings of fact and conclu- sions of law.
509.28	Briefs	509.28	Briefs.
509.29	Exceptions	509.29	Exceptions.
509.30	Oral argument before the Board	509.30	Oral argument before the Office.
09.31	Notice of submission to the Board	509.31	Notice of submission to the Office.
509.32	Decision of the Board	509.32	Decision of the Office.
509.33	Scope	509.33	Scope.  Notice of assessment; request for hear
509.34	Notice of assessment; request for hearing; answer	509.34	ing; answer.
09.35	Notice of hearing	509.35	Notice of hearing.
509.36	Assessment orders	509.38	Assessment orders.
609.37	Payment of civil penalty	509.37	Payment of civil penalty.
09.38	Relevant considerations	509.38	Relevant considerations.
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PART 509a			Coope
09a.1	Scope	508.1	Scope. Definitions.
509a.2	Definitions	508.3	Issuance of Notice or Order.
09a.3	Issuance of Notice or Order	508.4	Contents and service of the Notice of
509a.4	Contents and service of the Notice or Order,	505,4	Order.
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509a.5	Initiation of hearing	508.6	Initiation of hearing.
509a.6	Conduct of hearings	508.7	Conduct of hearings.
09a.7	Default	508.8	Default.
09a.8	Rules of evidence	508.9	Rules of evidence.
509a.9	Burden of persuasion	508.10	Burden of persuasion.
09a.11	Relevant considerations.	508.11	Relevant considerations.
509a.12	Proposed findings and conclusions and recommended decision	508.12	Proposed findings and conclusions and
000d. 12			recommended decision.
509a.13	Decision of the Board	508.13	Decision of the Office.
509a.14	Miscellaneous	508.14	Miscellaneous.
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510.1	Provisions relating to ex parte communications	510.1	Provisions relating to ex parte communi
			cations.
PART 5108		PART 515	
510a.1	Purpose and scope	515.1	Purpose and scope.
510a.2	Contact person for missing children photographs on penalty mail	515.2	Contact person for missing children pho
		FAFO	tographs on penalty mail.  Policy and implementation.
510a.3	Policy and implementation	515.3	Responsibility of Board administrative
510a.4	Responsibility of Board administrative unit for implementation and procedure	515.4	unit for implementation and procedure
	governing use of penalty mail in location of missing children.		governing use of penalty mail in loca
			tion of missing children.
110× E	Exceptions to use of missing children photographs and biographical data on	515.5	Exceptions to use of missing childre
510a.5	penalty mail.	010.0	photographs and biographical data of
	penaty man.		penalty mail.
10a.6	Expiration date	515.6	Expiration date.
	S-(P-1-5-1-5-1-5-1-5-1-5-1-5-1-5-1-5-1-5-1-		
PART 511		4000000	
511.735-1	Purpose	Removed	Later than the same of the sam
11.735-2	Definition	Removed	The same of the sa
511.735-3	Effective date and distribution,	Removed	
511.735-4	Counseling	Removed	
511.735-10	General prohibitions	Pemoved	
511.735-11	Gifts, entertainment, favors and loans	Removed	
511.735-12	Soliciting contributions; accepting and giving gifts	Removed	
511.735-13	Accepting gifts from foreign governments	Removed	
11.735-14	Outside employment and other activities	Removed	The state of the s
511.735-15	Payments to Board Members	Removed	
511.735-16	Financial interest	Removed	
511.735-17	Use of Agency property	Removed	
511.735-18	Misuse of information	Removed	
511.735-19	Indebtedness	Removed	
511.735-20	Gambling, betting and lotteries	Removed	
	General conduct prejudicial to the Government.	Removed	
511.735-22 511.735-25	Use of Agency employment	Removed	
511.735-26	Use of inside information	Removed	
511.735-27	Coercion	Removed	LINE DE LA CONTRACTOR D
	Gifts, entertainment and favors		Market Committee of the
511.735-28			

Previous section	Previous title	New section	* New title
511.735-35	Filing and review of statements of employment and financial interests	Removed	
511.735-36	Employees required to submit statements	Removed	
511.735-36a	Employees complaint on filing requirement	Removed	
511.735-37	Board Members not required to submit statements	Removed	
511,735-38	Time and place for submission of employees' statements	Removed	
511.735-39	Supplementary statements	Removed	
511.735-40	Interests of employees' relatives	Removed	
511.735-41	Information not known by employees	Removed	
11.735-42	Information not required	Removed	
511.735-43	Effect of employees' statements on other requirements	Removed	
11.735-44	Specific provisions of Agency regulations for special.	Removed	
11.735-50	Reporting unresolved conflicts of interest	Removed	
11.735-51	Opportunity to be heard	Removed	
11.735-52	Action by the Chairman	Removed	
11.735-53	Violations of this part cause for disciplinary action	Removed	
11.735-54	Remedial action to be effected in accordance with law and regulation	Removed	
11.735-55	Miscellaneous statutory provisions	Removed	
11.737-1	Applicable provisions of law	Removed	
11.737-2	Enforcement proceedings	Removed	
A PROPERTY OF THE PARTY OF THE			
12.1	Scope of part	512.1	Scope of part.
12.2	Definitions	512.2	Definitions.
12.3	Confidentiality of proceedings	512.3	Confidentiality of proceedings.
12.4	Transcripts	512.4	Transcripts.
12.5	Rights of witnesses	512.5	Rights of witnesses.
12.6	Obstruction of the proceedings	512.6	Obstruction of the proceedings.
12.7	Subpoenas		Subpoenas.
PART 513			
Control of the Contro	0		
13.1	Scope of part	513.1	Scope of part.
13.2	Definitions	513.2	Definitions.
13.3	Who may practice	513.3	Who may practice.
13.4	Suspension and debarment	513.4	Suspension and debarment.
13.5	Reinstatement	513.5	Reinstatement.
13.6	Duty to file information concerning adverse judicial or administrative action	513.6	Duty to file information concerning a
			verse judicial or administrative action
13.7	Proceeding under this part	513.7	Proceeding under this part.
PART 514			The state of the s
14.1	Scope	Removed	
14.2	Definitions	Removed	
14.3	Duties and responsibilities of the Advisory Committee	Removed	
14.4	Membership	Removed	
14.5	Vacancies	Removed	
14.6	Chairperson responsibilities and duties	Removed	
14./	Meeting procedures	Removed	
14.8	Travel expense reimbursement	Removed	
14.9,	Conflict of interest and disclosure of sensitive information	Removed	
14.10	Advisory Committee responsibility for safe-quarding sensitive information	Removed	
14.11	Execution of agreement with Corporation	Removed	
PART 516		*	
		1	
6.100	Purpose	Removed	
0.105	Definitions	Removed	
0.110	Coverage	Removed	
0.115	Policy	Removed	
0.200	Department or suspension	Removed	
0.205	ineligible persons	Removed	
0.210	Voluntary exclusion	Removed	
0.210	Exception provision	Removed	
0.220	Continuation of covered transactions	Removed	
	Fallure to adhere to restrictions	Removed	
0.300	General	Removed	
0.305	Causes for debarment	Removed	
0.310	Procedures	Removed	
0.311	Investigation and referral	Removed	
0.012	Notice of proposed debarment	Removed	
0.010	Opportunity to contest proposed debarment	Removed	
0.514	Debarring official's decision	Removed	
0.515	Settlement of voluntary exclusion	Removed	
0.320	Period of debarment	Removed	
0.020	Scope of debarment	Removed	
0.400	General	Removed	
0.403	Causes for suspension	Removed	
0.410	Procedures	Removed	
0.411	Notice of suspension	Removed	
0.412	Opportunity to contest suspension	Removed	
6.413	Suspending official's decision	Removed	
0.410	reriod of suspension	Removed	
0.420	Scope of suspension	Removed	
	GSA responsibilities	Domowad	
3.505	Board responsibilities	Removed	
3.510	Participants' responsibilities	III + TOTTIOY GU	

Previous section	Previous title	New section	New title
516.600	Purpose	Removed	TAXABLE DESIGNATION OF THE PARTY OF THE PART
16.605	Definitions	Removed	
6.610	Coverage	Removed	
6.615	Grounds for suspension of payments, suspension or termination of grants, or	Removed	
	suspension or debarment.		
16.620	Effect of violation	Removed	
18.625	Exception provision	Removed	
6.630	Grantees' responsibilities	Removed	
	Certification regarding debarment, suspension, and other responsibility mat-	Removed	
ppendix A		Tierrovou	THE RESERVE OF THE PARTY OF THE PARTY.
	ters—Primary covered transaction.	Removed	
ppendix B	Certification regarding debarment, suspension, ineligibility and voluntary exclu-	Heliloved	THE RESERVE THE PARTY OF THE PA
	sion—Lower tier covered transactions.	Damanad	ALLEGA DE LA COMPANION DE LA C
ppendix C	Certification regarding drug-free workplace requirements	Removed	
PART 521		PART 931	THE RESIDENCE OF THE PARTY OF T
The state of the s	Act	Removed	(FHFB-931.1).
21.1		Removed	(FHFB-931.2).
21.2	Bank		( * LO )
1.3	Board	Removed	(FHFB-931.3).
21.4	Creditor liabilities	Removed	(FHFB-931.4).
21.5	Deposits in banks or trust companies	Removed	(FHFB-931.5).
21.6	Home mortgage	561.23	Home mortgage.
21.6-1	Home	Removed	(FHFB-931.7).
1.6-2	Other dwelling unit.	Removed	(FHFB-931.8).
1.7	Member	Removed	(FHFB-931.9).
1.8	[Previously Removed]		
1.9	Obligations of the United States	Removed	(FHFB-931.11).
	Paid-in value of stock in a Bank	Removed	(FHFB-931.12).
21.10			
21.11	State	Removed	(FHFB-931.13).
PART 522		PART 932	The state of the s
		Removed	(FHFB-932.1).
2.1	Charter	004555002000000000000000000000000000000	217200-212000-2127 Verille 1
2.5	Par value and price of stock	Removed	(FHFB-932.2).
2.6	Dividends	Removed	(FHFB-932.3).
2.10	Issuance and form of stock	Removed	(FHFB-932.4).
2.11	Stock in consolidations	Removed	(FHFB-932.5).
2.12	Stock in reorganizations	Removed	(FHFB-932.6).
2.13	Loss or destroyed certificates	Removed	(FHFB-932.7).
22.20	General	Removed	(FHFB-932.8).
22.21	Director representing Puerto Rico	Removed	(FHFB-932.9).
	Definition of member	Removed	(FHFB-932.10).
22.22			
22.23	Location of member	Removed	(FHFB-932.11).
22.24	Report of stock investment	Removed	(FHFB-932.12).
22.25	Designation and nomination of elective directorship	Removed	(FHFB-932.13).
22 26	Election of directors	Removed	(FHFB-932.14).
22.26a	Special provisions for election of directors during calendar year 1988	Removed	
22.27	Prohibition of actions influencing votes	Removed	(FHFB-932.15).
22.28	Definition of "State"	Removed	(FHFB-932.16).
2 30	Special scheduling provisions for election of directors during calendar year 1989	Removed	
2.60	Compensation	Removed	(FHFB-932.27).
	Duties	Removed	(FHFB-932.28).
2.61			(FHFB-932.29).
2.62	Responsibility of bank directors	Removed	A CHARLEST CONTROL OF THE PARTY
2.70	Selection	Removed	(FHFB-932.40).
2.71	Compensation	Removed	(FHFB-932.41).
2.72	Indemnification	Removed	(FHFB-932.42).
2.73	Restrictions as to former employees	Removed	(FHFB-932.43).
2.75	General	Removed	(FHFB-932.50).
2.76	President	Removed	(FHFB-932.51).
2.30	General	Removed	(FHFB-932.55).
2.81	Functions of Office of Finance	Removed	(FHFB-932.56).
2.82	Budget and expenses	Removed	(FHFB-932.57).
2.83	[Previously Revoked]	Damouad	(FHFB-932.60).
2.85	General District Office of Neithborhood District Office of Nei	Removed	
2.86	Functions and duties of Office of Neighborhood Reinvestment	Removed	(FHFB-932.61).
2.87	Budget and expenses	Removed	(FHFB-932.62).
2.90	Office of Regulatory Policy, Oversight, and Supervision	Removed	(FHFB-932.65).
PART 523		PART 933	The same of the sa
TO SHALL STATE OF THE SHALL SH	A TOP TOP TOP TO THE TOT THE TOP TO THE TOP		(F) (FD 000 4)
3.1	Application form	Removed	(FHFB-933.1).
3.2	[Previously Removed]		
3.3	Board action on applications	Removed	(FHFB-933.3).
3.3-1	Automatic board approval in certain cases	Removed	(FHFB-933.4).
3.3-2	Membership at principal place of business designation, transfer of membership	Removed	(FHFB-933.5).
3.3-3	Delegations	Removed	(FHFB-933.6).
200		Removed	(FHFB-933.7).
3.4	Subscription	The state of the s	
3.5	Additional subscription	Removed	(FHFB-933.8).
3.6	Adjustments in holdings	Removed	(FHFB-933.9).
3.7	Excess subscription	Removed	(FHFB-933.10).
3.8	Payment on subscription	Removed	(FHFB-933.11).
3.9	[Previously Deleted]		the second second second
3.10	Definitions for purposes of this Section, § 523.11 and § 523.12	566.1	Definitions.
Control of the Contro	Liquidity requirements	566.2	Requirements.
	Engaranty 100ps 91101120	Contract Con	
3.11	Deficiencies and penalties	566.3	Deficiencies and penalties.

Previous section	Previous title	New section	New title
22 14	Payment of panalty		
23.14	Payment of penalty	566.5	. Payment of penalty.
23.15	Reports	Removed	
23.20	Examinations of members	Removed	
23.25	Official membership insignia	Removed	
23.29	Flood disaster protection	563.48	. Flood disaster protection.
23.30	Procedure for withdrawal	Removed	. (FHFB-933.32).
23.31	Procedure for removal	Removed	. (FHFB-933.33).
23.32	[Previously Deleted]		
PART 524	PART 934		
4.1	Investments	Removed	(FHFB-934.1).
4.2	Loans guaranteed under the Foreign Assistance Act of 1961	Removed	(FHFB-934.2).
4.3	Transfer of funds between banks	Removed	
4.4	Deposits from members	Removed	
4.5	Trustee powers	Removed	
4.6	Budgets	Pamound	I CALLACTE AND CONTROL TO STORY
4.7	Surety bonds	Removed	
4.8	Incurance	Removed	
10	Insurance	Removed	Control of the Contro
1.9	Safe-keeping accounts.	Removed	(FHFB-934.9).
4.10	Securities held in trust or as collateral	Removed	(FHFB-934.10).
4.11	Donations	Removed	(FHFB-934.11).
4.12	Accounting	Removed	(FHFB-934.12).
4.13	Gold and gold-related transactions	Removed	(FHFB-934.13).
PART 525—			
ADVANCES		PART 935	
.1	Limitations on advances	Removed	(FHFB-935.1).
2	Extension of credit	Removed	(FHFB-935.2).
3	Interest rates	Removed	(FHFB-935.3).
	Bank stock collateral	Removed	(FHFB-935.3).
	Gold and gold-related securities ineligible as collateral		
.6	Terms of advances	Removed	The state of the s
	Collateral securing advances	Removed	
.8	Determination of value of collectual		(FHFB-935.7).
9	Determination of value of collateral		
	Additional collateral		
.10	Short term advances	Removed	(FHFB-935.10).
.33	Lines of credit	Removed	(FHFB-935.30).
5.34	Eligible institutions	Removed	(FHFB-935.31).
0.35	Rates of interest	Removed	(FHFB-935.32).
5.36	Application for advances	Removed	(FHFB-935.33).
PART 526		101101101	(11 0-303,55).
	Definitions	Occ balance	
	Mombar	See below	
	Member		
	Certificate account		Certificate account.
	Savings account	561.42	Savings account.
1(0)	Tax and loan account		Tax and loan account.
.1(e)	Note account	561.33	Note account.
.1(f)	United States Treasury general account	561.53	United States Treasury General Acco
.1(g)	United States Treasury time deposit open account	561.54	United States Treasury Time Dep
			Open Account.
	Advertising interest or dividends on savings accounts	563.27	Advertising.
PART 527		PART 937	THE RESERVE TO SERVE THE PARTY OF THE PARTY
1	General	Removed	(FHFB-937.1).
2	Dennitions	Removed	(FHFB-937.2).
3	Middle-income families	Removed	(FHFB-937.3).
4	Low-income families	Removed	
5	Credits to member institutions	Removed	(FHFB-937.4).
6	Disbursement of funds to Banks	Removed	(FHFB-937.5).
	Retention of documents		(FHFB-937.6).
	Recertification of income	Removed	(FHFB-937.7)
PART 528		Removed	(FHFB-937.8).
	Definitions		
1a	Definitions	528.1	Definitions.
	Supplementary guidelines	528 ta	Supplementary guidelines.
L	Nondiscrimination in lending and other services	528.2	Nondiscrimination in lending and of
2a1	Nondiscriminatory appraisal and underwriting	528.2a	services.  Nondiscriminatory appraisal and und
-		The Thomas and the Control of the Co	writing.
3!	Nondiscrimination in applications	528.3	Nondiscrimination in applications.
T	Nondiscriminatory advertising	528.4	Nondiscriminatory advertising.
J 1	equal Housing Lender poster	528 5	
6	Monitoring Information	528.6	Equal Housing Lender poster.
The state of the s		The state of the s	Monitoring information.
	Association instructions for preparation of loan	Appendix A	
	application registers	to § 528.6	
528.6			
528.6			
528.6	Association instructions for preparation of data	Appendix B	
528.6	Association instructions for preparation of data	Appendix B	
528.6		Appendix B	Nondiscrimination in employment.

Previous section	Previous title	New section	New title
1004	2	529.1	Purpose.
5291	Purpose	529.2	Definitions.
29.2	Definitions	529.3	Application of this part.
29.3	Application of this part		Discrimination prohibited.
29.4	Discrimination prohibited.	529.4	
29.5	Assurances required	529.5	Assurances required.
29.6	Compliance information	529.6	Compliance information.
29.7	Conduct of investigations	529.7	Conduct of investigations.
29.8	Procedure for effecting compliance	529.8	Procedure for effecting compliance.
29.9	Hearings	529.9	Hearings.
29.10	Decisions and notices	529.10	Decisions and notices.
29.11	Judicial review	529.11	Judicial review.
29.12	Effect on other regulations	529.12	Effect on other regulations.
		- Inches and the last of the l	
Appendix A PART 531	Activities to which this part applies	AppendixPART 940	
	Policy on advance to members	Removed	(FHFB-940.1).
31.1	Policy of advance to members	Removed	(FHFB-940.2),
31.2	Policy on Federal Savings and Loan Insurance Corporation—guaranteed ad-	riginovou	(1111 D-040.2).
	vances and loans to the Federal Savings and Loan Insurance Corporation.		
31.3	[Previously Deleted]		
31.4	Assigned collateral; verification	Removed	(FHFB-940.3).
31.5	[Proviously Deleted]		the state of the s
31.6			
31.7	[Previously Reserved]		
	Guidelines relating to nondiscrimination in lending	571.24	Guidelines relating to nondiscrimination
31.8	adioentes relating to northiscimination in tending		in lending.
	A STATE OF THE STA	Domound	
31.9	Interest rates on advances	Removed	(FHFB-940.5).
31.10	Accepting pooled accounts	571.25	Accepting pooled accounts.
31.12	Transfer and repurchase of government securities [Redesignated as FSLIC-Insured Institution regulation, 12 CFR 563.8-4, ¶ 4668, effective May 27, 1982].	Removed	
PART 532		E74.47	Payment in gold ot its equivalent.
32.1	Payment in gold or its equivalent	571.17	r aymont in gold of its equivalent.
PART 533			1000
THE PERSON NAMED IN	er and the second secon	E00 *	Electronic fund transfers subject to Re
33.1	Electronic fund transfers subject to Regulation E	533.1	ulation E.
PART 534		PART 943	
	A ALUMNIA CONTROL CONT	Removed	(FHFB-943.1).
34.1	Authority and scope		(FHFB-943.2).
34.2	Definitions	Removed	
34.3	General provisions	Removed	(FHFB-943.3).
34.4	Incidental powers	Removed	(FHFB-943.4).
34.5	Operations	Removed	(FHFB-943.5).
34.6	Pricing of services	Removed	(FHFB-943.6).
34.7	Rights, powers, responsibilities, duties and liabilities.	Removed	(FHFB-943.7).
PART 535			
35.1	Definitions	535.1	Definitions.
35.2	Unfair credit contract provisions	535.2	Unfair credit practices.
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Accordingly, the Office of Thrift Supervision hereby revises chapter V, title 12, Code of Federal Regulations to read as follows:

#### CHAPTER V—OFFICE OF THRIFT SUPERVISION, DEPARTMENT OF THE TREASURY

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Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

# Subpart A—Functions and Responsibilities of the Director of the Office of Thrift Supervision

# § 500.1 General statement and statutory authority.

The Director of the Office of Thrift Supervision (referred to in this chapter as "Director" or "Office") is responsible for the administration and enforcement of the Home Owners' Loan Act of 1933, ("HOLA"), and applicable portions of the Federal Deposit Insurance Act and with respect to savings associations subject to provisions of the foregoing acts and title, the Bank Protection Act of 1968, the Truth in Lending Act, and the Fair Credit Reporting Act.

# § 500.3 The Federal savings association system.

The Office is authorized under such rules and regulations as it may prescribe to provide for the organization, incorporation, examination, operation, and regulation of Federal savings associations. Under this authority, the Office's functions include, but are not limited to, regulation of the corporate structure of such associations, regulation of the distribution of their earnings, regulation of their lending and other investment powers, acting upon their applications for facility offices (including branch offices, limited facilities, mobile facilities and satellite offices), the regulation of mergers, conversions, and dissolutions involving such associations, the appointment of conservators and receivers for such associations, and the enforcement of laws, regulations, or conditions against such associations or the officers or directors thereof by proceedings under section 5 of the Home Owners' Loan Act of 1933, as amended.

# § 500.4 Supervision and regulation of savings associations.

The Office regulates and examines savings associations within the authority conferred by the HOLA and the FDIA and is authorized to enforce applicable laws, regulations, or conditions against savings associations or the officers or directors thereof by proceedings under section 5 of the HOLA and section 8 of the FDIA as amended. The Office also regulates and supervises savings and loan holding companies pursuant to the provisions of section 10 of the HOLA, as amended, and section 8 of the FDIA.

# § 500.5 District of Columbia savings associations.

The Office exercises supervisory and regulatory authority over all building and loan or savings and loan associations and similar institutions of or doing business in or maintaining offices in the District of Columbia.

# § 500.6 General statement concerning gender-related terminology.

The statutes administered by the Office and the rules, regulations, policies, practices, publications, directives, and guidelines promulgated pursuant to such statutes that prescribe the course and methods to be followed by the Office that inadvertently use or contain gender-related terminology are to be interpreted as equally applicable to either sex.

# Subpart B-General Organization

# § 500,10 The Office.

The Office of Thrift Supervision is an Office of the Department of the Treasury. Its functions are to charter, supervise, regulate and examine Federal savings associations and to supervise, regulate, and examine all savings associations. It is directed by a Director, who is appointed by the President and confirmed by the Senate to a five year term.

# § 500.11 Secretary to the Office.

The Secretary to the Office is responsible for the secretarial functions of the Office and has custody of the records of the Office. The Secretary to the Office is responsible for the preparation and maintenance of the Record of all official actions of the Office, for the authentication of documents and for certifications. The Office of the Secretary provides general record services for the Office through the Files and Docket Section, which is under the direction and supervision of the Secretary to the Office.

#### § 500.12 Senior Deputy Director for Congressional Relations and Communications.

The Senior Deputy Director for Congressional Relations and Communications is responsible to the Director for ensuring appropriate coordination and communication with Congress and the public and the news media.

# § 500.13 Senior Deputy Director for Management.

The Senior Deputy Director for Management is responsible for the administration and management of the internal financial operations of the Office, including budgeting, accounting, receipt, and disbursement of funds; control, processing, and payment of expenses; and maintenance of pay and leave records. The responsibility includes the supervision and administration of the office.

### § 500.14 Chief Economist.

The Chief Economist, as principal economic adviser to the Office, is responsible for the design and supervision of economic analysis in the areas of general economic developments, capital and mortgage markets, housing, and the savings and loan industry and competing financial intermediaries, as well as matters relating to legislation, regulation, and policies of the Office. The Chief Economist's responsibilities also include: Developing and maintaining various research, statistical, and econometric programs to gather and keep current information relating to the savings and loan industry; providing research support and advice to the Office and acting as official economic spokesman for the Office.

# § 500.17 The Chief Counsel.

The Chief Counsel is the chief legal officer of the Office and has, among other functions, those set forth below. The Chief Counsel is responsible for the representation of the Office in judicial proceedings in which the Office is involved as a party or as amicus curiae, except for those enforcement actions in which the Office is represented by the Office of Enforcement. He also is responsible for defending all appeals of final Office orders in the federal Courts of Appeal. The Chief Counsel is responsible for advising the Office with respect to interpretations involving questions of law, for the preparation of legislation submitted by the Office to Congress, for the preparation of Office comments to Congress upon pending legislation, and for the preparation and interpretation of regulations. In addition, the Chief Counsel also is responsible for dealing with general problems arising under the Administrative Procedure Act and for dealing with legal problems arising under applications to the Office.

# § 500.19 Senior Deputy Director for Supervision (Operations).

The Senior Deputy Director for Supervision (Operations) serves as chief liaison between the 12 District Offices and the Office and oversees the operations and financial programs of each District Office. The Senior Deputy Director for Supervision (Operations) is responsible for ensuring that the District Offices conform with applicable laws as well as Office regulations and policies and for arranging annual audits of each of the District Offices. The Senior Deputy Director for Supervision (Operations) is responsible for processing, reviewing, and evaluating certain applications to the Office, except for applications which are approved by other agents or offices of the Office pursuant to delegated authority.

# § 500.20 Senior Deputy Director for Supervision (Policy).

The Senior Deputy Director for Supervision (Policy) is responsible for developing, as directed by the Director, policy guidelines for the Office in the areas within the Office's authority.

# Subpart C-Procedures

# § 500.30 General statement concerning procedures and forms.

(a) Rules and procedures of the Office are published in chapter V of title 12 of the Code of Federal Regulations and in supplementary material published in the Federal Register. The statutes administered by the Office and the rules and regulations promulgated pursuant to such statutes prescribe the course and method of the formal procedures to be followed in proceedings of the Office. These are supplemented where practicable by informal procedures designed to aid the public and facilitate the execution of the Office's functions. The informal procedures of the Office consist principally in the rendering of advice and assistance to members of the public dealing with the Office. Opinions expressed by members of the staff do not constitute an official expression of the views of the Office, but do represent views of persons working with the provisions of the statute or regulation

(b) Information with respect to procedures, forms, and instructions of the Office is available to the public at the headquarters of the Office. Forms of concern to the public consist principally of periodic financial reports and of applications to the Office. The Office may from time to time require the completion by individuals or savings associations of miscellaneous forms, questionnaires, reports, or other papers. In each instance, the individual or savings association is given actual and timely notice of the scope and contents of the papers in question.

# § 500.32 Offices of the Office of Thrift Supervision; Information and submittals.

(a) The headquarters of the Office is located at 1700 G Street, NW., Washington, DC 20552. General information concerning the Office and District Offices of the Office may be obtained in person at that location or by written request addressed to the Secretary to the Office, 1700 G Street, NW., Washington, DC 20552.

(b) The District Offices of the Office and their districts are as follows:

(1) Boston District Office, One Financial Center, 20th Floor, Boston, Massachusetts 02111. (District: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).

(2) New York District Office, I World Trade Center, Floor 103, New York, New York 10048. (District: New Jersey, New York, Puerto Rico, Virgin Islands).

(3) Pittsburgh District Office, 20 Stanwix Street, One Riverfront Center, Pittsburgh, Pennsylvania 15222. (District: Delaware, Pennsylvania, West Virginia).

(4) Atlanta District Office, 1475
Peachtree Street, N.E., Atlanta, Georgia
30309. (District: Alabama, District of
Columbia, Florida, Georgia, Maryland,
North Carolina, South Carolina,
Virginia).

(5) Cincinnati District Office, 2000 Atrium II, 221 E. 4th Street, Cincinnati, Ohio 45202. (District: Kentucky, Ohio,

Tennessee).

(6) Indianapolis District Office, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204. (District: Indiana, Michigan).

(7) Chicago District Office, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601. (District: Illinois,

Wisconsinl

(8) Des Moines District Office, 907
Walnut Street, Des Moines, Iowa 50309.
(District: Iowa, Minnesota, Missouri,
North Dakota, South Dakota).

(9) Dallas District Office, 500 E. John Carpenter Freeway, P.O. Box 619026, Dallas/Fort Worth, Texas 75261. (District: Arkansas, Louisiana, Mississippi, New Mexico, Texas).

(10) Topeka District Office, 3 Townsite Plaza, 200 East 6th Street, Topeka, Kansas 66603. (District: Colorado, Kansas, Nebraska, Oklahoma).

(11) San Francisco District Office, 580 California Street, 10th Floor, San Francisco, California 94104. (District: Arizona, California, Nevada).

(12) Seattle District Office, 1501 4th Avenue, 19th Floor, Seattle, Washington 98101. (District: Alaska, Hawaii, Guam, Idaho, Montana, Oregon, Utah, Washington, Wyoming).

# PART 502-ASSESSMENTS

Authority: Sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467).

# § 502.1 Interim assessments and fees.

(a) Interim assessments and fees. To fund the Office's operations until a permanent assessment mechanism is in place, the Director shall issue an initial assessment or assessments upon savings associations, calculated on the basis established in paragraphs (b) and (c) of this section and payable by the means prescribed in paragraph (h) of this section, except that the Director may in special cases direct that payment be made by the means prescribed in paragraph (i) of this section. The Director may also issue initial assessments under paragraphs (d) through (g) of this section.

(b) Interim examination fees for savings associations. Each savings association shall pay to the Office an assessment fee or fees. The amount of the assessment shall be calculated as a percentage of each assessed savings association's assets as shown on its Thrift Financial Report for the most recent month. The percentage of assets shall be the same for each savings association. The percentage to be applied shall be announced by the Director and shall (except as adjusted by paragraph (c) of this section) be determined by him based on his estimate of necessary revenues.

(c) Working-capital fund. The Director may establish a working-capital fund pursuant to section 9(1) of the Home Owners' Loan Act of 1933, as amended. The working-capital fund shall be funded by collections by the Director of fees under paragraph (b) of this section at a level in excess of expenses actually incurred by the Office during the Interim period. If the Director collects an interim assessment or assessments under paragraphs (d) and (e) of this section, he may likewise set those assessments at a level to contribute to the working-capital fund authorized by this paragraph (c). The Director shall refund to the payors funds collected in excess of those that he deems necessary to maintain the

working-capital fund and to pay the Office's expenses.

(d) Examination fees for affiliates. Each affiliate of a savings association. in the discretion of the Director, shall pay to the Office an assessment fee or fees. The amount of the assessment shall be calculated as a percentage of each assessed affiliate's assets as shown in the most recent statement on file with the Office or, if there is no such statement, the results of the most recent examination. The percentage of assets shall be the same for each assessed affiliate except as the Director may otherwise direct. The percentage to be applied shall be announced by the Director and shall (except as adjusted by paragraph (c) of this section) be determined by him based on his estimate of necessary revenues.

(e) Further fees for examinations and supervisory activities. The Director may assess upon institutions for which the Director is the appropriate Federal banking agency, within the meaning of section 3 of the Federal Deposit Insurance Act, additional interim fees that may be necessary to fund the direct and indirect expenses of the Office. Such fees shall be imposed in proportion of the assets or resources of the institutions.

(f) Fees for fiduciary examinations. The Director may assess interim fees adequate to cover the cost of examinations of fiduciary activities of savings associations that exercise fiduciary powers. The fees shall be assessed upon the institution examined, and may include office analysis, overhead, per diem, travel expense, and other costs, direct or indirect, attributable to the examination.

(g) Processing fees. The Director may establish an interim schedule of fees for processing applications, filings, notices, requests for approval, and other such submissions. Such fees shall be set at an amount necessary to cover the Office's projected costs of processing such submissions. Submissions for which a processing fee is required shall not be processed if the fee is not tendered with the submission, except in the discretion of the Director or his designees.

(h) Collection of fees and assessments by debit of accounts at Federal Home Loan Banks. Each association that is:

(1) Subject to fees and assessments under paragraphs (a) through (f) of this section, and

(2) A member of a Federal Home Loan Bank, shall establish at its Federal Home Loan Bank a demand deposit account for the purpose of paying such fees and assessments. Each such member association, using a form approved by the Director, shall authorize its Federal Home Loan Bank to debit such account directly to effectuate payment of assessments and fees to the Office, and shall maintain funds in such account in sufficient amount to pay its obligations to the Office. The Director shall mail a payment notice to each such association at least five days prior to the date that any such account is to be debited to pay the member association's obligations to the Office, which notice shall specify the date on which the debit is to occur.

(i) Direct billing of associations. As an alternative to the payment mechanism described in paragraph (h) of this section, the Director may collect assessments by sending notice and demand for direct payment thereof to an assessed association. In such case, the association shall pay the fee or assessment identified in such notice not later than the date specified in such notice. This payment procedure shall be used to collect fees and assessments from assessed institutions that are not members of a Federal Home Loan Bank.

(j) Interest. For all associations, overdue fees and assessments shall bear interest. Such interest shall be calculated at a rate (to be redetermined quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter.

### PART 503—PRIVACY ACT

Authority: Sec. 552a, 80 Stat. 383, as amended (5 U.S.C. 552a); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

Cross Reference: See 31 CFR part 1, subpart C.

### § 503.1 Scope and procedures.

(a) In general. The Privacy Act regulations of the Department of the Treasury, 31 CFR part 1, subpart C, apply to the Office as a component part of the Department of the Treasury. This part 503 sets forth, for the Office, specific notification and access procedures with respect to particular systems of records, and identifies the officials designated to make the initial determinations with respect to notification and access to records and accountings of disclosures of records. This part 503 also sets forth the specific procedures for requesting amendment of records and identifies the officials designated to make the initial and appellate determinations with respect to requests for amendment of records. It identifies the officials designated to

grant extensions of time on appeal, the officials with whom "Statements of Disagreement" may be filed, the official designated to receive service of process and the addresses for delivery of requests, appeals, and service of process. In addition, it references the notice of systems of records and notices of the routine uses of the information in the system required by 5 U.S.C. 552a(e) (4) and (11) and published annually by the Office of the Federal Register in "Privacy Act Issuances."

(b) Requests for notification and access to records and accountings of disclosures. Initial determinations under 31 CFR 1.26, whether to grant requests for notification and access to records and accountings of disclosures for the Office, will be made by the head of the organizational unit having immediate custody of the records requested or an official designated by this official. This is indicated in the appropriate system notice in "Privacy Act Issuances published annually by the Office of the Federal Register. Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Office of Congressional Relations and Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(c) Requests for amendment of records. Initial determinations under 31 CFR 1.27(a) through (d), whether to grant requests to amend records will be made by the head of the organizational unit having immediate custody of the records or the delegate of such official. Requests for amendment should be addressed to: Privacy Act Amendment Request, Office of Congressional Relations and Communications, Office of Thrift Supervision, 1700 G Street, NW.,

Washington, DC 20552.

(d) Administrative appeal of initial determinations refusing amendment of records. Appellate determinations refusing amendment of records under 31 CFR 1.27(e) including extensions of time on appeal, with respect to records of the Office will be made by the Director of the Office of Thrift Supervision ("Director") or Chief Counsel or the delegate of the Director or Chief Counsel. Appeals made by mail should be addressed to, or delivered personally to: Privacy Act Amendment Appeal, Office of Congressional Relations and Communications, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(e) Statements of disagreement. "Statements of Disagreement" under 31 CFR 1.27(e)(4)(i) shall be filed with the Senior Deputy Director for

Congressional Relations and Communications at the address indicated in the letter of notification within 35 days of the date of such notification and should be limited to one

(f) Service of process. Service of process will be received by the Chief Counsel's Office or the delegate of such official and shall be delivered to the following location: Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(g) Annual notice of systems of records. The annual notice of systems of records is published by the Office of the Federal Register, as specified in 5 U.S.C. 552a(f). The publication is entitled "Privacy Act Issuance." Any specific requirements for access, including identification requirements, in addition to the requirements set forth in 31 CFR 1.26 and 1.27 are indicated in the notice for the pertinent system.

### PART 504—NATIONAL SECURITY INFORMATION

Sec.

504.1 Purpose and scope.

504.2 Policy.

504.3 Administration of program.

504.4 Mandatory review procedure.

Authority: E.O. 12356, 47 FR 27836 (1982).

#### § 504.1 Purpose and scope.

(a) This part is issued by the Office pursuant to the requirement of Subpart E of Executive Order 12356, 47 FR 27839 (1982) ("the Order"), that unclassified regulations that establish information security policy and unclassified guidelines for systematic declassification review, which affect the public, be published in the Federal Register.

(b) This part covers all information and material handled by the Office that is owned by, produced for or by, or under the control of, the United States Government, has been determined pursuant to the Order or prior orders to require protection against unauthorized disclosure, and is so designated. Such material is referred to in this part as classified information.

#### § 504.2 Policy.

It is the Office's policy to act in accordance with the Order with respect to all classified information.

### § 504.3 Administration of program.

The Senior Deputy Director for Management ("Senior Deputy Director").

(a) Implement and oversee the Office's information security program; (b) Receive questions, suggestions, and complaints regarding it;

(c) Make changes to it as he deems advisable;

(d) Ensure that it is at all times consistent with the Order;

(e) Receive requests for declassification regardless of the origin of any such request, ensuring that requests are acted upon promptly and a final determination as to declassification is made within one year from the date or receipt except in unusual circumstances; and

(f) Ensure that requests submitted under the Freedom of Information Act are handled in accordance with that

Act.

# § 504.4 Mandatory review procedure.

The Senior Deputy Director shall process requests for mandatory review for declassification. He shall not refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the Mandatory Review Provision of the Order, unless the fact of its existence or non-existence would itself be classified under the Order.

### PART 505—FREEDOM OF INFORMATION ACT

Sec

505.1 Basis and scope.

505.2 Public reading room. 505.3 Requests for records.

505.4 Administrative appeal of initial determination to deny records.

505.5 Delivery of process.

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

Cross Reference: See 31 CFR part 1, subpart A.

### § 505.1 Basis and scope.

(a) This part is issued by the Office of Thrift Supervision ("Office") as a supplement to the Freedom of Information Act regulations of the Department of the Treasury, 31 CFR part 1, subpart A, which apply to the Office as a component part of the Department

of the Treasury.

(b) This part is issued by the Office pursuant to the requirement of section 552 of title 5 of the United States Code, which requires every federal agency to publish in the Federal Register the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals on requests, or obtain decisions, and the forms available or the places at which forms and instructions as to the scope

and contents of all papers, reports, or examinations may be found. Information about the Public Reading Room is set forth in § 505.2 of this part. Procedures for requests for information are set forth in § 505.3 of this part. Information about administrative appeals is set forth in section 505.4 of this part. Provisions relating to delivery of process upon the Office are set forth in § 505.5 of this part.

# § 505.2 Public reading room.

The Office will make materials available for review on an ad hoc basis when necessary. Contact the FOIA Division, Office of Congressional Relations and Communications, Office of Thrift Supervision, 801 17th Street, NW., Washington, DC 20006.

# § 505.3 Requests for records.

Initial determinations under 31 CFR 1.5(g) as to whether to grant requests for records of the Office will be made by the Freedom of Information Officer or the official so designated. Requests may be mailed or delivered in person to: Freedom of Information Act Request, FOIA Division, Office of Congressional Relations and Communications, Office of Thrift Supervision, 801 17th Street, NW., Washington, DC 20006.

# § 505.4 Administrative appeal of initial determination to deny records.

Appellate determinations under 31 CFR 1.5(h) with respect to records of the Office will be made by the Chief Counsel or his or her designee. Appeals made by mail should be addressed to: FOIA Division, Office of Congressional Relations and Communications, Office of Thrift Supervision, 801 17th Street, NW., Washington, DC 20006. Appeals may be delivered personally to the FOIA Division, Office of Congressional Relations and Communications, Office of Thrift Supervision, 801 17th Street, NW., Washington, DC 20006.

# § 505.5 Delivery of process.

Service of process will be received as set forth in section 510.4 of this subchapter.

# PART 508—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVEN

Sec.

508.1 Scope.

508.2 Definitions.

508.3 Issuance of Notice or Order. 508.4 Contents and service of the Notice or

Order.

508.5 Petition for hearing.

508.6 Initiation of hearing.

508.7 Conduct of hearings.

Sec.

508.8 Default.

508.9 Rules of evidence.

508.10 Burden of persuasion.
508.11 Relevant considerations.

508.12 Proposed findings and conclusions

and recommended decision.
508.13 Decision of the Office.

508.14 Miscellaneous.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 2, 64 Stat. 879, as amended (12 U.S.C. 1818).

#### § 508.1 Scope.

The rules in this part apply to hearings, which are exempt from the adjudicative provisions of the Administrative Procedure Act, afforded to any officer, director, or other person participating in the conduct of the affairs of a savings association, affiliate service corporation, savings and loan holding company, or subsidiary of such a holding company, where such person has been suspended or removed from office or prohibited from further participation in the conduct of the affairs of one of the aforementioned entities by a Notice or Order served by the Office upon the grounds set forth in section 8(g) of the Federal Deposit Insurance Act, (12 U.S.C. 1818(g)).

#### § 508.2 Definitions.

As used in this part-

- (a) The term Office means the Office of Thrift Supervision.
- (b) The term Secretary means the Secretary to the Office and any Assistant or Acting Secretary to the Office.
- [c] The term Notice means a Notice of Suspension or Notice of Prohibition issued by the Office pursuant to section 8(g) of the Federal Deposit Insurance Act.
- (d) The term *Order* means an Order of Removal or Order of Prohibition issued by the Office pursuant to section 8(g) of the Federal Deposit Insurance Act.
- (e) The term association means a savings association within the meaning of section 2(4) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1462(4) ("HOLA"), an affiliate service corporation within the meaning of section 8(b)(8) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1818(b)(8) ("FDIA"), a savings and loan holding company within the meaning of section 10(a)(1)(D) of the HOLA, 12 U.S.C. 1467a(a)(1)(D) and a subsidiary of a savings and loan holding company (other than a savings association) within the meaning of section 10(a)(1)(G) of the Home Owners' Loan Act of 1933.
- (f) The term subject individual means a person served with a Notice or Order.

(g) The term petitioner means a subject individual who has filed a petition for informal hearing under this Part.

#### § 508.3 Issuance of Notice or Order.

(a) The Office may issue and serve a Notice upon an officer, director, or other person participating in the conduct of the affairs of an association, where the individual is charged in any information, indictment, or complaint with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law, if the Office, upon due deliberation, determines that continued service or participation by the individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the association. The Notice shall remain in effect until the information, indictment, or complaint is finally disposed of or until terminated by the Office.

(b) The Office may issue and serve an Order upon a subject individual against whom a judgment of conviction, or an agreement to enter a pretrial diversion or other similar program has been rendered, where such judgment is not subject to further appellate review, and the Office, upon the deliberation, has determined that continued service or participation by the subject individual may pose a threat to the interests of the association's depositors or may threaten to impair public confidence in the

# § 508.4 Contents and service of the Notice or Order.

association.

(a) The Notice or Order shall set forth the basis and facts in support of the Office's issuance of such Notice or Order, and shall inform the subject individual of his right to a hearing, in accordance with this part, for the purpose of determining whether the Notice or Order should be continued, terminated, or otherwise modified.

(b) The Secretary shall serve a copy of the Notice or Order upon the subject individual and the related association in the manner set forth in § 509.9 of this subchapter.

(c) Upon receipt of the Notice or Order, the subject individual shall immediately comply with the requirements thereof.

# § 508.5 Petition for hearing.

(a) To obtain a hearing, the subject individual must file two copies of a petition with the Secretary within 30 days of being served with the Notice or Order.

(b) The petition filed under this section shall admit or deny specifically each allegation in the Notice or Order, unless the petitioner is without knowledge or information, in which case the petition shall so state and the statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a petitioner intends in good faith to deny only a part of or to qualify an allegation, he shall specify so much of it as is true and shall deny only the remainder.

(c) The petition shall state whether the petitioner is requesting termination or modification of the Notice or Order, and shall state with particularity how the petitioner intends to show that his continued service to or participation in the conduct of the affairs of the association would not, or is not likely to, pose a threat to the interests of the association's depositors or to impair public confidence in the association.

# § 508.6 Initiation of hearing.

(a) Within 10 days of the filing of a petition for hearing, the Office shall notify the petitioner of the time and place fixed for hearing, and it shall designate one or more Office employees to serve as presiding officer.

(b) The hearing shall be scheduled to be held no later than 30 days from the date the petition was filed, unless the time is extended at the request of the petitioner.

(c) A petitioner may appear personally or through counsel, but if represented by counsel, said counsel is required to comply with § 509.5 of this subchapter.

(d) A representative(s) of the Office's Office of Enforcement also may attend the hearing and participate therein as a party.

# § 508.7 Conduct of hearings.

(a) Hearings provided by this section are not subject to the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554-557). The presiding officer is, however, authorized to exercise all of the powers enumerated in § 509.4 of this subchapter.

(b) Witnesses may be presented, within time limits specified by the presiding officer, provided that at least 10 days prior to the hearing date, the party presenting the witnesses furnishes the presiding officer and the opposing party with a list of such witnesses and a summary of the proposed testimony. However, the requirement for furnishing such a witness list and summary of testimony shall not apply to the presentation of rebuttal witnesses. The presiding officer may ask questions of any witness, and each party shall have

an opportunity to cross-examine any witness presented by an opposing party.

(c) Upon the request of either the petitioner or a representative of the Office of Enforcement, the record shall remain open for a period of 5 business days following the hearing, during which time the parties may make any additional submissions for the record. Thereafter, the record shall be closed.

(d) Following the introduction of all evidence, the petitioner and the representative of the Office of Enforcement shall have an opportunity for oral argument; however, the parties may jointly waive the right to oral argument, and, in lieu thereof, elect to submit written argument.

(e) All oral testimony and oral argument shall be recorded, and transcripts made available to the petitioner upon payment of the cost thereof. A copy of the transcript shall be sent directly to the presiding officer, who shall have authority to correct the record sua sponte or upon the motion of any party.

(f) The parties may, in writing, jointly waive an oral hearing and instead elect a hearing upon a written record in which all evidence and argument would be submitted to the presiding officer in documentary form and statements of individuals would be made by affidavit.

#### § 508.8 Default.

If the subject individual fails to file a petition for a hearing, or fails to appear at a hearing, either in person or by attorney, or fails to submit a written argument where oral argument has been waived pursuant to § 508.7(d) or (f) of this part, the Notice shall remain in effect until the information, indictment, or complaint is finally disposed of and the Order shall remain in effect until terminated by the Office.

# § 508.9 Rules of evidence.

(a) Formal rules of evidence shall not apply to a hearing, but the presiding officer may limit the introduction of irrelevant, immaterial, or unduly repetitious evidence.

(b) All matters officially noticed by the presiding officer shall appear on the record.

# § 508.10 Burden of persuasion.

The petitioner has the burden of showing, by a preponderance of the evidence, that his or her continued service to or participation in the conduct of the affairs of the association does not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association.

# § 508.11 Relevant considerations.

(a) In determining whether the petitioner has shown that his or her continued service to or participation in the conduct of the affairs of the association would not, or is not likely to, pose a threat to the interests of the association's depositors or threaten to impair public confidence in the association, in order to decide whether the Notice or Order should be continued. terminated, or otherwise modified, the Office will consider:

(1) The nature and extent of the petitioner's participation in the affairs of the association;

(2) The nature of the offense with which the petitioner has been charged;

(3) The extent of the publicity accorded the indictment and trial; and

(4) Such other relevant factors as may be entered on the record.

(b) When considering a request for the termination or modification of a Notice, the Office will not consider the ultimate guilt or innocence of the petitioner with respect to the criminal charge that is outstanding.

(c) When considering a request for the termination or modification of an Order which has been issued following a final judgment of conviction against a subject individual, the Office will not collaterally review such final judgment of conviction.

#### § 508.12 Proposed findings and conclusions and recommended decision.

(a) Within 30 days after completion of oral argument or the submission of written argument where oral argument has been waived, the presiding officer shall file with the Secretary and certify to the Office for decision the entire record of the hearing, which shall include a recommended decision, the Notice or Order, and all other documents filed in connection with the hearing.

(b) The recommended decision shall contain:

(1) A statement of the issue(s) presented,

(2) A statement of findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record, and

(3) An appropriate recommendation as to whether the suspension, removal, or prohibition should be continued, modified, or terminated.

# § 508.13 Decision of the Office.

(a) Within 30 days after the recommended decision has been certified to the Office, the Office shall issue a final decision.

(b) The Office's final decision shall contain a statement of the basis therefor. The Office may satisfy this requirement where it adopts the recommended decision of the presiding officer upon finding that the recommended decision satisfies the requirements of § 509.27(b) of this subchapter.

(c) The Secretary shall serve upon the petitioner and the representative of the Office of Enforcement a copy of the Office's final decision and the related recommended decision.

# § 508.14 Miscellaneous.

The provisions of §§ 509.9, 509.10, 509.11, 509.12, and of this subchapter shall apply to proceedings under this

# PART 509-RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY **PROCEEDINGS**

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Authority: Sec. 556, 80 Stat. 386, as amended (5 U.S.C.556); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 78/).

# Subpart A-General

# § 509.1 Scope of regulations.

This part prescribes rules of practice and procedure applicable to adjudicatory proceedings as to which hearings are provided by the following statutory provisions:

(a) Hearings in cease and desist proceedings under section 8(b) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1818(b) ("FDIA"

(b) Hearings under section 8(e) of the FDIA, 12 U.S.C. 1818(e), to determine whether a director, officer, or other person should be removed from office and/or prohibited from further participation in the conduct of the affairs of a savings association;

(c) Hearings under section 10(a)(2)(D) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1467a(a)(2)(D), to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any

other company;

(d) Hearings under section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2), section 18(i)(4) of the FDIA, 12 U.S.C. 1828(j)(4), section 10(i)(3) of the HOLA, 12 U.S.C. 1467a(i)(3) and section 7(j)(16) of the FDIA, 12 U.S.C. 1817(j)(16), to determine whether and/or to what extent civil penalties should be assessed against associations, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials or institution-affiliated parties for violation of any regulation, law, order, written agreement, condition imposed in writing by the Office in connection with the grant of any application, or in the conduct of any unsafe or unsound practice in conducting the affairs of the association or breach of any fiduciary duty that is a part of a pattern of misconduct that causes or is likely to cause more than a minimal loss to the savings association or results in pecuniary gain or other benefit to such party;

(e) Hearings under section 9(d) of the HOLA, 12 U.S.C. 1467(d), to determine whether and/or to what extent civil

penalties should be assessed against any savings association for failure of the association's affiliate to permit any examiner appointed by the Director to make an examination or failure to provide any information required to be disclosed in the examination;

(f) Hearings under section 10(g)(5)(A) of the HOLA, 12 U.S.C. 1467a(g)(5)(A), to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a non-insured savings and loan holding company subsidiary;

(g) Hearings under section 7(j)(4) of the FDIA, 12 U.S.C. 1817(j)(4), to determine whether the Office should issue an order to approve or disapprove a person's proposed acquisition of a savings association and/or savings and

loan holding company;

- (h) Hearings under section 5(v) of the HOLA, 12 U.S.C. 1464(v) and section 10(r)(5) of the HOLA, 12 U.S.C. 1467a(r)(5) to determine whether penalties should be assessed against associations, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials for submission of false or inaccurate information to the Office; and
- (i) Hearings under section 15(c)(4) of the Securities Exchange Act of 1934, 15 U.S.C. 780(c)(4) (the "Exchange Act"), to determine whether any association or person subject to the jurisdiction of the Office pursuant to section 12(i) of the Exchange Act, 15 U.S.C. 78/(i), has failed to comply with the provisions of sections 12, 13, 14(a), 14(c), 14(d), or 14(f) of the Exchange Act.

#### § 509.2 Definitions.

As used in this part:

(a) The term adjudicatory proceeding means a proceeding conducted pursuant to this part and leading to the formulation of a final order other than a

regulation.

(b) The term association means a savings association within the meaning of section 2(4) of the HOLA, 12 U.S.C. 1462(4), a subsidiary of a savings association, a savings and loan holding company within the meaning of section 10(a)(1)(D) of the HOLA, 12 U.S.C. 1467a(a)(1)(D) and a subsidiary of a savings and loan holding company within the meaning of section 10(a)(1)(G) of the HOLA, 12 U.S.C. 1467a(1)(G).

(c) The term Office means the Office of Thrift Supervision, the Director of the Office of Thrift Supervision or his

designee.

(d) The term *Director of Enforcement* means the chief enforcement officer for the Office, any designee, representative,

counsel, or any person subject to the direction of the Director of Enforcement.

(e) The term Secretariat means the Secretary to the Office of Thrift Supervision, including any Acting or Assistant Secretary to the Office.

(f) The term Administrative Law Judge means an Administrative Law Judge appointed pursuant to section 3105 or detailed to the Office pursuant to section 3344 of Title 5 of the United States Code to preside at a hearing conducted in accordance with this part. As used in this part, the term also shall refer to the Office or any person to whom the Office has delegated authority to act when an Administrative Law Judge has not been appointed or is unavailable.

(g) The term party means an association or person named as a respondent in any adjudicatory proceeding. The Office's Director of Enforcement and/or any of the attorneys subject to the direction of the Director of Enforcement is deemed to be a party to all proceedings under this part.

(h) The term Respondent means any association or person against whom the Office seeks relief in the notice commencing the adjudicatory

proceeding.

- (i) The term notice means the notice that commences the adjudicatory proceeding, is served upon the Respondent by the Office, and designates a date, time, and place for the hearing to be conducted in connection with the allegations in the notice.
- (j) Any use of a masculine, feminine, or neuter gender shall be deemed to encompass whichever usage would be appropriate under the circumstances, in accordance with § 500.6 of this subchapter.

#### § 509.3 Appointment of Administrative Law Judge.

(a) Appointment. Unless otherwise directed by the Office, all hearings under this part shall be conducted by an Administrative Law Judge appointed by the United States Office of Personnel Management.

(b) Procedures. (1) Following the issuance and service of a notice, the Office or any person designated by the Office shall promptly request the appointment of an Administrative Law Judge to conduct the proceeding.

(2) Upon notification that a
Administrative Law Judge has been
appointed, the Office or any person
designated by the Office shall advise the
parties in writing of such appointment.

(3) If for any reason the designated Administrative Law Judge is unable to conduct or complete the proceeding for which he was appointed, a successor Administrative Law Judge shall be requested and appointed.

#### § 509.4 Authority of the Administrative Law Judge.

All hearings governed by this part shall be conducted in accordance with the provisions of Chapter 5 of Title 5 of the United States Code. The Administrative Law Judge designated pursuant to this part to preside at any such hearing shall be in charge of the hearing and shall have the duty to conduct it in a fair and impartial manner and to take all action to avoid unnecessary delay in the disposition of the proceeding. Such Administrative Law Judge shall have all powers necessary to that end, including the following powers:

(a) To administer oaths and affirmations;

(b) To issue subpoenas and subpoenas duces tecum, as authorized by this part, and to revoke, quash, or modify any such subpoenas;

(c) To receive relevant evidence and to rule upon the admission of evidence

and offers of proof;

(d) To take or cause depositions to be taken as authorized by this part;

(e) To regulate the course of the hearing and the conduct of the parties and their counsel;

 (f) To hold conferences for the settlement or simplification of issues or for any other proper purpose;

(g) As justice may require, to consider and rule upon all procedural and other motions appropriate in an adversarial proceeding, except that only the Office shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in final determination of the merits of the proceeding; and

(h) To prepare and present to the Office a recommended decision as provided herein.

Without limitation as to paragraphs (a) through (h) of this section, the Administrative Law Judge shall, subject to the provisions of this part, have all the authority of section 556(c) of Title 5 of the United States Code.

# § 509.5 Appearance and practice in an adjudicatory proceeding.

(a) Appearance before the Office—(1) By non-attorneys. An individual may appear on his own behalf; an authorized member of a partnership may represent the partnership; a bona fide and duly authorized officer of a corporation, trust, or association may represent the corporation, trust, or association; and an

official or employee of any governmental unit, agency, or authority may represent that unit, agency, or authority before the Office (including representation before the Administrative Law Judge appointed to conduct the proceeding), unless such individual, partner, officer, or employee has been suspended or debarred from practice in accordance with the provisions of part 513 of this subchapter or excluded or suspended from the proceeding pursuant to paragraph (c) of this section.

(2) By attorneys. Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia and who has not been suspended or debarred from practice before the Office in accordance with the provisions of part 513 of this subchapter or excluded or suspended from a particular proceeding in accordance with paragraph (c) of this section may represent parties or other persons in such adjudicatory proceeding. An attorney representing a party in an adjudicatory proceeding shall file a notice of appearance with the Secretariat, containing a written declaration that he is currently qualified to practice before the Office as provided by this paragraph (a)(2) and is authorized to represent the particular party on whose behalf he acts. Included in the notice of appearance shall be a written disclosure as to whether the attorney has ever been suspended or debarred from practice by the bar of any State, territory, Commonwealth, or the District of Columbia and, if so, the date(s) of any such suspension or debarrment and a description of the facts and circumstances surrounding the

(b) Conflict of interest in representation. An individual shall not represent another person in an adjudicatory proceeding if it reasonably sppears that such representation may be affected by that individual's responsibilities to a third person or by the individual's own interests. The Administrative Law Judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(c) Sanctions. Dilatory, obstructionist, egregious, contemptuous, or contumacious conduct at any phase of any adjudicatory proceeding under this part, as determined in the sole discretion of the Administrative Law

Judge, may be grounds for exclusion therefrom and suspension for the duration of the proceeding and may be grounds for suspension or debarment pursuant to part 513 of this subchapter.

(d) Representatives of nonparties. A nonparty who is required or requested to testify at a prehearing deposition pursuant to \$ 509.23 may be represented by any person qualified to represent a party before the Office. Anyone representing a nonparty in such a situation need not file a notice of appearance unless expressly ordered to do so by the Administrative Law Judge, but may be required by the Administrative Law Judge or any party to state on the record or in writing the information required in a notice of appearance. No attorney or other representative who refuses to provide such information shall be permitted to represent any person in the proceeding.

### § 509.6 Good faith certification.

(a) General requirement. After the issuance of the notice, every subsequent written presentation by a party represented by an attorney shall be signed by at least one attorney of record in that attorney's individual name and shall state the attorney's business address and telephone number. A party who is not represented by an attorney shall sign his presentations and shall include his address and telephone number.

(b) Effect of signature. (1) The signature of an attorney or party constitutes a certification by the signer that the attorney or party has read the presentation; that, to the best of his knowledge, information, and belief formed after reasonable inquiry, the presentation is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a presentation is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) Effect of making oral motion or argument. The act of making any oral motion or oral argument by any attorney or party constitutes a certification by the attorney or party that, to the best of his knowledge, information, and belief formed after reasonable inquiry, his statements are well grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and are not interposed for any improper purpose, such as to harass or to cause

unnecessary delay or needless increase in the cost of litigation.

(d) Sanctions for violation. If a presentation is made in violation of this section, the Administrative Law Judge may, on motion of any party or on his own motion, impose upon the attorney, represented party, or both any appropriate sanction authorized by this part.

# § 509.7 Ex parte communications.

(a) Definition. "Ex parte communication" means any material oral or written communication concerning the merits of an adjudicatory proceeding that takes place between a party, his counsel, or another person interested in the proceeding and the Administrative Law Judge handling that proceeding, the Office or any person who may reasonably be expected to be involved in assisting or advising the Office with respect to the preparation of a decision with respect to that proceeding and that was neither on the record nor on reasonable prior notice to all parties.

(b) Prohibition of ex parte communications. From the time the notice is served, or from the date that a party learns that a notice has been approved by the Office, whichever is applicable, until the date that the Office serves its final decision pursuant to § 509.32, no person, including any person involved in the decisional process concerning the proceeding, shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding.

(c) Communications involving the Administrative Law Judge. (1) The Administrative Law Judge shall not consult anyone within the Office on the merits of an adjudicatory proceeding, except upon notice and opportunity for all parties to participate in such consultation. This section shall not be construed as prohibiting the Administrative Law Judge from consulting with employees or agents of the Office on procedural matters.

(2) The Administrative Law Judge shall not be responsible to, nor subject to the supervision or direction of, any officer, employee, or agent of the Office engaged in the performance of investigatory or adjudicatory functions.

(d) Procedure upon occurrence of ex parte communication. If an ex parte communication is received by the Administrative Law Judge, the Office or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of

the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within 10 days of receipt of service of the ex parte communication to file responses thereto and to recommend any sanctions that they believe to be appropriate under the circumstances. The Administrative Law Judge shall then determine whether any action should be taken concerning the ex parte communication and, if so, what that action should be.

(e) Sanctions. To the extent consistent with the interests of justice and the policy of the HOLA and/or the FDIA, knowing violation of this section may be a ground for a decision adverse to a party who violates this section or may be a ground for suspension or debarment of any person engaging in such conduct under the procedures set forth in § 509.5(c) herein or in part 513 of this subchapter.

#### § 509.8 Maintenance of the record.

The transcript of testimony and exhibits, together with all papers and requests (including motions, stipulations, exceptions, rulings, pleadings, briefs, and other materials filed in connection with the proceeding) shall constitute the exclusive record for decision in accordance with this part. The Secretariat shall maintain the official record of all papers filed in each proceeding under this part. Upon appointment of the Administrative Law Judge, the Secretariat shall forward to the Administrative Law Judge a copy of the existing record of the proceeding.

#### § 509.9 Service.

(a) By the Office. All documents or papers required to be served by the Office upon any party afforded a hearing shall be served by the Secretariat unless some other person shall be designated for such purpose by the Office. Such service, except for service on counsel for the Director of Enforcement, shall be made by personal service or by registered or certified mail, addressed to the last known address of such party, or on the attorney or representative of record so such party. provided that if there is no attorney or representative of record, such service shall be made upon such party at the last known address of such party. Such service may also be made in such other manner reasonably calculated to give actual notice as the Office may by regulation or otherwise provide.

(b) By the parties. Except as otherwise expressly provided in this part, all documents or papers filed in a proceeding under this Part 509 shall be

served by the party filing the same upon the attorneys or representatives of record of all other parties to the proceeding or, if any party is not so represented, then upon such party. Such service may be made by personal service, by registered, certified, or regular first-class mail, or by an express delivery service addressed to the last known address of such parties or to their attorneys or representatives of record. Service shall be deemed to have been made at the time of personal service, upon deposit in the United States mails of a properly addressed and postage-paid document, or upon delivery of such document to an express delivery service. All such documents or papers shall include a certificate, signed by the person making service and stating that such service on other parties has been made and indicating the date and method of such service.

(c) By the Administrative Law Judge. Copies of all orders and rulings on motions by the Administrative Law Judge shall be served on all parties to the proceeding in the same manner as described in paragraph (b) of this section. The Administrative Law Judge shall file the original of all rulings and orders by him with the Secretariat.

#### § 509.10 Filing of papers.

(a) Unless otherwise specifically provided in the notice or by the Administrative Law Judge, an original and one copy of all documents and papers required to be served under this part shall be filed with the Secretariat, with a copy to the Administrative Law Judge after he is designated. This rule shall not apply to the transcript of testimony and exhibits adduced at the hearing or to proposed exhibits submitted in advance of the hearing pursuant to an order of the Administrative Law Judge pursuant to § 509.19.

(b) All material required to be filed with the Office or the Secretariat shall be filed with the Secretariat, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC, 20552. Any such filing with the Secretariat shall be made at the time of service or within a reasonable time thereafter, but must be received by the Secretariat in Washington, DC within three business days of service on the other parties.

# § 509.11 Formal requirements as to papers filed.

(a) Form. All papers filed under this part shall be double spaced and printed or typewritten on 8½ by 11 inch paper. All copies shall be clear and legible.

(b) Signature. The original of all papers filed by a party shall be signed

by such party or by the duly authorized agent or attorney of such party and must show the address of the signer. Counsel for the Director of Enforcement shall sign the original of all papers filed by that Office.

(c) Caption. All papers filed must include at the head thereof, or on the title page, the name of the Office, the name of the party afforded the hearing, the number of the resolution giving notice of the hearing, and the subject matter of the particular paper.

#### § 509.12 Computing time.

(a) General rule. In computing any period of time prescribed or allowed by this part, the date of the act, event, or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period shall run until the end of the next day that is neither a Saturday, Sunday, nor such federal holiday. When the period of time prescribed or allowed is 10 days or less. intermediate Saturdays, Sundays, and such federal holidays shall be excluded in the computation.

(b) Service by mail. Whenever any party has the right or is required to do some act within a period of time prescribed in this part after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period; provided, however, that if an overnight mail service is used, only one day shall be added to the prescribed period.

(c) Change of time limits. Except as otherwise provided by law, the Administrative Law Judge may, at the request of the parties or sua sponte, extend the time limits prescribed by these rules or by any notice or order issued in the proceedings for good cause shown. Prior to the appointment of an Administrative Law Judge and after the filing of a recommended decision pursuant to § 509.27(b), the Office or any person designated by the Office may grant such extensions for good cause shown.

#### § 509.13 Notice.

Whenever a hearing is ordered by the Office in any proceeding provided for in this part, a notice shall be served by the Secretariat, or other person designated for such purpose by the Office, upon the party or parties afforded the hearing. Such notice shall state the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and, if an

Administrative Law Judge has been designated to preside at the hearing, the name and address of such Administrative Law Judge. Such notice shall also contain a statement of the matters of fact and law constituting the grounds for the hearing.

#### § 509.14 Answer.

(a) When required. In any notice commencing an adjudicatory proceeding, the Office shall direct the party or parties afforded the hearing to file an answer to the allegations contained in the notice. Except where a different period of not less than 10 days after service of a notice is specified by the Office, a party shall file an answer with the Secretariat within 20 days after service upon him of the notice.

(b) Requirements of answer; effect of failure to deny. An answer filed under this section shall concisely state any defenses and specifically admit or deny each allegation in the notice, unless the party is without knowledge or information, in which case his answer shall so state and such statement shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. When a party contends in good faith that part of an allegation is false, he shall specify so much of it as is true and shall deny only the remainder.

(c) Admitted allegations. If a party filing an answer under this section elects not to contest any of the allegations of fact set forth in the notice, his answer shall consist of a statement that he admits all of the allegations to be true. Such answer shall constitute a waiver of hearing as to the facts alleged in the notice. All parties will then have an opportunity to serve proposed findings of fact, conclusions of law, and a discussion of the appropriate remedy under the circumstances, together with supporting briefs, with copies to the Administrative Law Judge. These filings, together with the notice, will provide a record basis on which the Administrative Law Judge shall file with the Secretariat his recommended decision in accordance with § 557 of Title 5 of the United States Code.

(d) Effect of failure to answer. Failure of a party to file an answer required by this section within the time provided shall be deemed to constitute a waiver of his right to appear and contest the allegations in the notice. If no answer is filed, the Administrative Law Judge, without further notice to the party, may receive proposed findings of fact, conclusions of law, and a recommended order from the Director of Enforcement and, based thereon, may find the facts to be as alleged in the notice and file with the Secretariat a recommended decision

containing such findings and appropriate conclusions. The Administrative Law Judge may, for good cause shown, permit the filing of a delayed answer after the time for filing the answer has expired, provided that a request to file such a delayed answer is made to the Administrative Law Judge within the time prescribed for the filing of the answer. No request to file a delayed answer will be considered after the time for filing the answer has expired.

# § 509.15 Amending pleadings.

(a) Amendments. The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the Administrative Law Judge. Such leave shall be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Administrative Law Judge orders otherwise for good cause shown.

(b) Amendments to conform to the evidence. When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they shall be treated in all respects as if they have been raised in the notice or answer and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the Administrative Law Judge may allow the notice or answer to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the Administrative Law Judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

# § 509.16 Consolidation and severance of proceedings.

(a) Consolidation. On motion of any party, or upon the initiative of the Administrative Law Judge, or by resolution of the Office:

(1) Any two or more proceedings may be consolidated for some or all purposes if each proceeding involves or arises out of the same transaction or occurrence, or series of transactions or occurrences, and material common questions of law or fact will arise in each of the proceedings, unless such consolidation would cause unreasonable delay or injustice.

(2) Any two or more proceedings against the same or at least one common respondent that involve or arise out of the same transaction or occurrence, or series of transactions or occurrences, and involve common questions of law or fact may be consolidated for some or all purposes, unless such consolidation would cause unreasonable delay or manifest injustice.

(b) Severance. On the motion of any party or upon the initiative of the Administrative Law Judge, or by resolution of the Office, a proceeding involving two or more respondents may be severed for some or all purposes if:

(1) Severance is appropriate because the proceeding against one or more respondents is settled, stayed, or cannot proceed; or

(2) Severance will promote prompt resolution of the proceeding as to one respondent, or as to some or all respondents; or

(3) Severance is otherwise required to prevent manifest injustice.

#### § 509.17 Motions.

(a) In writing. An application or request for an order or ruling not otherwise specifically provided for in this part shall be made by motion. After an Administrative Law Judge has been designated to preside at a hearing and before the filing with the Secretariat of his recommended decision, all such motions shall be filed with the Secretariat, with a copy to the Administrative Law Judge, as provided in § 509.10 of this part. At all other times motions shall be addressed to the Office and filed with the Secretariat. In either case, a copy shall also be served on every other party to the proceeding. Motions shall be in writing, except that a motion made at a session of a hearing may be made orally on the record unless the Administrative Law Judge directs that it be reduced to writing. All written motions shall state with particularity the order or relief sought and the grounds therefor.

(b) Responses. Within 15 days after service of any written motion, or within such other period of time as may be fixed by this part or by order of the Administrative Law Judge, any party may file a written response to such motion. The moving party shall have no right to reply to such response except as expressly permitted by this part or by order of the Administrative Law Judge. The Administrative Law Judge may waive the requirements of this section as to motions for brief extensions of time and may rule upon such motions after receiving an oral response from the opposing party.

(c) Dilatory motions not permitted. Repetitive or numerous motions that raise the same issues or arguments or deal with the same subject matter as previously-decided motions shall not be permitted. Such dilatory notions may form the basis for sanctions under § 509.5(c) of this part or part 513 of this subchapter. The Administrative Law Judge may assess costs attendant to responding to or ruling on such motions against parties who file such dilatory motions.

(d) Supporting papers. Written memoranda or briefs may be filed with motions or responses thereto, stating the points and authorities relied upon in support of the position taken.

(e) Oral argument. No oral argument will be heard on motions except as directed by the Administrative Law

Judge.

(f) Rulings on motions. Except as otherwise provided in this part, the Administrative Law Judge shall rule promptly upon all motions properly served upon him and upon such other motions as the Office may direct, except that if the Administrative Law Judge finds that a prompt decision by the Office on a motion is essential to the proper conduct of the proceeding, he may refer such motion to the Office for decision. The original of all rulings and orders on motions by the Administrative Law Judge shall be filed by him with the Secretariat, and copies served by the Administrative Law Judge on all parties to the proceeding.

(g) Continuation of proceeding. Unless otherwise ordered by the Administrative Law Judge or the Office, the proceeding, including the hearing, shall continue pending the determination of any motion that must be decided by the Office.

### § 509.18 Interlocutory review.

(a) General rule. The Office will review a ruling of the Administrative Law Judge prior to the submission of the Administrative Law Judge's recommended decision only in extraordinary circumstances that warrant the Office's prompt review and in accordance with the procedures set forth in this section.

(b) Scope of review. An interlocutory appeal may be permitted, in the discretion of the Office, under the

following circumstances:

(1) Appeal from a ruling pursuant to \$ 509.5 suspending an attorney or other representative from participation in a particular proceeding;

(2) Appeal from an order denying a motion for summary disposition;

(3) On certification by the Administrative Law Judge in accordance with paragraph (c) of this section; (4) Upon any other interlocutory ruling where certification has been denied by the Administrative Law Judge. Interlocutory review shall not be granted under this paragraph (b)(4) unless the Office determines that the Administrative Law Judge's failure to certify the matter was clearly erroneous.

(c) Certification by Administrative Law Judge. (1) Any party may move that the Administrative Law Judge certify and permit an appeal of a contested ruling to the Office. Such a motion shall be served within 10 days of the Administrative Law Judge's notification to the parties of the contested ruling; provided, however, that if such a motion is made during the hearing, the Administrative Law Judge may permit the motion and responses thereto to be made orally. The motion for certification must state the grounds relied upon, including the reasons for permitting the interlocutory review, in accordance with the criteria set forth in paragraph (c)(2) of this section. Any party may serve a response to a motion for certification within 10 days after service of the

(2) The Administrative Law Judge shall certify a ruling for interlocutory review to the Office only upon a motion by a party and a determination by the Administrative Law Judge that (i) the ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion; and (ii) an immediate appeal from the ruling may materially advance the ultimate conclusion of the proceeding. Any certification to the Office shall be in writing and shall set forth the relevant issues, an explanation of the ruling on the issues, and specific reasons for the granting of the moving party's request for review by the Office.

(d) Procedure. Where certification is not required under paragraph (b) of this section or where the Administrative Law Judge certifies a ruling for interlocutory review by the Office, or where a party believes that a denial of certification by the Administrative Law Judge was clearly erroneous, a petition for interlocutory review may be filed within 10 days after notice of the Administrative Law Judge's ruling or certification. The petition shall include or have attached thereto a copy of the ruling or portion thereof from which appeal is being sought and present the points of fact and law relied upon in support of the position taken. Any party may serve a response to a petition for interlocutory review within 10 days of service of the petition. The Office shall determine whether to grant interlocutory review based upon the petition for review and any responses thereto

without oral argument or further written submissions unless the Office shall otherwise direct.

(e) Dismissal of interlocutory appeal by the Office. The Office may dismiss an interlocutory appeal if it finds that the Administrative Law Judge's certification was erroneously granted or if it finds that prompt consideration of the appeal is not warranted under the standards set forth in paragraph (c)(2) of this section.

(f) Notification by the Secretariat.

Neither a motion to the Administrative
Law Judge for interlocutory review, nor
a petition to the Office for interlocutory
review, nor the granting of such a
motion or petition under this section
shall suspend or stay the proceeding
unless otherwise ordered by the
Administrative Law Judge or the Office.
Any stay of longer than 30 days must be
specifically approved by the Office.

# § 509.19 Prehearing conference and exchange of information.

- (a) Prehearing conference. The Administrative Law Judge may, on his own initiative or at the request of any party, direct counsel for all parties to meet with him at a specified time and place prior to the hearing (in person or by telephone) and/or submit prehearing memoranda to him in writing, to address any or all of the following:
- (1) Simplification and clarification of the issues;
- (2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;
- (3) Matters of which official notice will be taken;
- (4) Limiting the number of witnesses; and
- (5) Such other matters as may aid in the orderly disposition of the proceeding.
- (b) Witnesses. Within a period of time established by the Administrative Law Judge and prior to the date scheduled for the hearing, each party shall serve a written list of witnesses to be called to testify at the hearing. The list shall contain the name and address of each witness and a brief summary of the testimony expected of each witness. The Administrative Law Judge shall not allow any witness to testify at the hearing who is not included on any party's witness list except for good cause shown.
- (c) Exhibits. Within a period of time established by the Administrative Law Judge and prior to the date scheduled for hearing, each party shall serve a written list of exhibits to be offered into evidence at hearing together with a copy

of each proposed exhibit. The
Administrative Law Judge shall not
allow any exhibit to be accepted into
evidence at the hearing that is not listed
and copied in accordance with the
provisions of this paragraph (c) except

for good cause shown.

(d) Stipulations. Within a period of time established by the Administrative Law Judge and prior to the date scheduled for the hearing, the parties shall by written stipulation agree upon as many pertinent facts as practicable. The parties may also stipulate to any other pertinent facts orally at the hearing. When stipulations are accepted by the Administrative Law Judge, they shall be binding on the parties.

(e) Prehearing brief. Any party may serve, and the Administrative Law Judge may require all parties to serve, a prehearing brief or legal memorandum in advance of the hearing date.

(f) Prehearing order. At or within a reasonable time following the conclusion of a prehearing conference, the Administrative Law Judge shall file with the Secretariat and serve upon each party a prehearing order setting forth agreements reached and any procedural determinations made. Any agreements reached among the parties at the prehearing conference or otherwise shall become part of the record and shall be binding on the parties unless the Administrative Law Judge permits otherwise for good cause shown.

# § 509.20 Opportunity for informal settlement.

(a) Any respondent may at any time unilaterally submit to the Secretariat, for consideration by the Office or its designee, with copies to all other parties, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. Other parties to the proceeding may respond to the settlement offer within 20 days of service of such settlement offer. Unless the Director of Enforcement recommends to the Office or its designee that it accept the submitted settlement offer, submission of a settlement offer shall not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this subpart. No such settlement offer or proposal shall be admissible in evidence over the objection of any party in any hearing in connection with such proceeding.

(b) Upon receipt of a settlement offer, the Office, its designee, or any person selected by the Office or its designee may consult with the parties about the settlement offer by convening a settlement conference with the parties or by requiring the submission of such

additional information as the Office or such other person may deem appropriate for consideration of the settlement offer.

(c) The Office shall notify the parties of its decision whether to accept the settlement offer within 60 days of its receipt of such settlement offer, unless extended in writing for good cause.

#### § 509.21 Discovery.

(a) General rule. Parties to proceedings under this part may obtain discovery only through the production of documents and only by order of the Administrative Law Judge in accordance with the procedures set forth in this paragraph (a). Except as otherwise expressly authorized by this part, no other form of discovery shall be allowed.

(b) Criteria. Discovery shall be permitted only upon a clear showing

that:

(1) The documents being sought are relevant and material to the requesting party's case or defense;

(2) The party seeking discovery has substantial need for the materials for the preparation of its case or defense; and

(3) The location and production of the documents will not result in any undue burden to any other party or in any undue delay in the proceeding.

(c) Procedure. Any party seeking to obtain discovery shall serve a motion for discovery containing facts and arguments sufficient to demonstrate that the criteria set forth in paragraphs (b)(1), (b)(2), and (b)(3) of this section have been satisfied. The motion shall identify with reasonable particularity the documents requested, either by individual item or by category. Any party may serve a response to the motion within 10 days of service thereof. Upon a clear showing that the criteria set forth in paragraphs (b)(1), (b)(2), and (b)(3) of this section have been satisfied, the Administrative Law Judge may grant all or such part of such discovery request as he may deem appropriate under the circumstances.

(d) Response. In the event that the Administrative Law Judge grants all or part of a discovery request, the party from whom the documents were requested shall furnish the documents within 20 days of service of the decision of the Administrative Law Judge, unless the parties agree on a different time or the Administrative Law Judge orders a different time for good cause shown. If any documents are withheld on the basis of privilege of any kind as provided by paragraph (e) of this section, the responding party shall provide a written list of the documents withheld, the privilege claimed with

respect to each document, and the basis for the claim of privilege.

(e) Privileged documents. Privileged documents are not discoverable. Applicable privileges include the attorney-client privilege, the attorney work product privilege, the governmental deliberative process privilege, and other such privileges as the Unites States Constitution, applicable acts of Congress, or principles of the common law may provide.

(f) Motions to compel production. If any party fails to comply with an order of the Administrative Law Judge granting a discovery request within the prescribed time for response, or withholds documents without a valid privilege claim, the requesting party may move for an order of the Administrative Law Judge compelling production of the documents. The Administrative Law Judge may impose sanctions under § 509.5(c) of this part for failure to comply with a discovery order.

(g) Protective orders. Upon a showing that discovery is being conducted in bad faith or in such a manner as unreasonably to annoy, oppress, or embarrass any party, the Administrative Law Judge may order discovery terminated or may limit the scope or manner of discovery. Grounds for terminating or limiting discovery include persistent requests for privileged documents, repeated inquiries into areas that are neither relevant nor likely to lead to the discovery of relevant information, and unwarranted attempts to pry into a party's preparation for trial.

(h) Time limits. All discovery, including all responses to discovery requests, shall be completed at least 30 days prior to the date scheduled for the commencement of the hearing. No exceptions to this rule shall be permitted unless the Administrative Law Judge finds on the record that good cause clearly exists for waiving the requirements of this section.

#### § 509.22 Subpoenas for documentary or physical evidence or for witness attendance.

(a) Issuance. The Administrative Law Judge shall issue subpoenas, as authorized by law, at the request of any party, requiring the attendance of witnesses at the hearing to be held in connection with an adjudicatory proceeding and/or the production of documentary or physical evidence at such hearing. Where it appears to the Administrative Law Judge that the subpoena may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the party seeking

the subpoena may be required, as a condition precedent to the issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. In the event the Administrative Law Judge, after consideration of all the circumstances, determines that the subpoena or any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to issue the subpoena, or may issue it in modified form upon such conditions as justice requires.

(b) Motion to quash. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than 10 days after the date of service of such subpoena, serve a motion, in accordance with the provisions of § 509.17 of this part, to revoke, quash, or modify such subpoena, accompanying such application with a statement of the

reasons therefor.

(c) Service of subpoena. The party seeking the subpoena is responsible for effecting service thereof. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena by personal service, certified or registered mail, or an express delivery service to such person and by tendering the fees for one day's attendance and the mileage as specified in paragraph (d) of this section, except that when a subpoena is issued at the insistence of counsel for the Director of Enforcement, fees and mileage need not be tendered at the time of service of the subpoena. If service is made by a United States Marshal, his deputy, or an employee of the Office, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpoena.

(d) Attendance of witnesses. The attendance of witnesses and the production of documents pursuant to a subpoena issued in connection with a hearing provided for in this part may be required from any place in any State, Commonwealth, possession, territory, or the District of Columbia at any designated place where the hearing is being conducted. Witnesses subpoenaed in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts

of the United States.

# § 509.23 Depositions.

(a) Prerequisites. Oral depositions shall be permitted in adjudicatory proceedings under this part only upon a showing that: (1) The proposed deponent is or is likely to be unavailable to attend the hearing because of age, illness, infirmity or other cause beyond the control of the deponent;

(2) The testimony of the proposed deponent will be relevant and material

to the proceeding; and

(3) The taking of the deposition will not result in any undue burden to any other party or in undue delay in the proceeding.

- (b) Procedure. Any party desiring to take the oral deposition of a witness shall serve a written motion setting forth facts sufficient to demonstrate that the prerequisites set forth in paragraph (a) of this section have been satisfied. The motion shall include the name and address of the proposed deponent and a statement setting forth the matters upon which the proposed deponent will be questioned, the materiality and relevance of the deponent's testimony, the need for the deposition, and the proposed time and place for the deposition. Any party may serve a response to the motion within 10 days after service thereof. Failure of a party to respond to such a motion within 10 days will be deemed to constitute a waiver of objection to the deposition.
- (c) Decision. Upon a showing that the prerequisites set forth in paragraph (a) of this section have been satisfied, the Administrative Law Judge may, by subpoena or subpoena duces tecum, order that such oral deposition be taken. If, after consideration of all circumstances, the Administrative Law Judge determines that the deposition or its location, in whole or in part, is unnecessary, unreasonable, oppressive, excessive in scope, or unduly burdensome, he may refuse to grant the motion or may grant it only upon such conditions as justice requires. The Administrative Law Judge shall serve a notice of the action taken on the motion upon each of the parties. Service shall be accomplished under the procedures of § 509.9 of this part. Service shall be completed at least 10 days in advance of the date and time fixed for the taking of the deposition.
- (d) Motion to quash. A person named in a subpoena or subpoena duces tecum to take evidence by oral deposition who is not a party to the proceeding may move to revoke, quash, or modify the subpoena. Such motion shall be accompanied by a statement of the reasons therefor and a copy of the motion shall be served upon the party requesting the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than 10 days after the date

of service of the subpoena, except for good cause shown.

- (e) Procedure on deposition; objections. Each witness testifying upon oral deposition shall be duly sworn, and all other parties shall have the right to cross-examine. Objections to questions or evidence shall be in short form, stating the grounds of objection, unless a valid privilege is asserted. If the deponent refuses to answer a question posed at a deposition, the deposition may be adjourned or completed at the option of the party who requested the deposition, except as to the unanswered question, and an oral or written request may be made to the Administrative Law Judge to compel an answer.
- (f) Protective orders. At any time during the taking of a deposition, on motion of the deponent or of any party, and upon a showing that the deposition is being conducted in bad faith or in such manner as unreasonably to annoy. embarrass, or oppress the deponent or party, the Administrative Law Judge may order the termination of the deposition or may limit the scope and manner of the taking of the deposition. Grounds for terminating or limiting a deposition include persistent questioning on privileged matters, repeated inquiries into areas that are neither relevant nor likely to lead to the discovery of relevant information, or unwarranted attempts to pry into a party's preparation for trial. The physical condition of the witness and the adequacy of the examination that has already taken place also may be considered.
- (g) Introduction as evidence. If the deposition or any portion of the deposition is offered at the hearing, the Administrative Law Judge shall then consider any objections raised, provided that those objections were made during the deposition and, at that time, may refuse to allow reading of the answer to any question found to be objectionable. Subject to appropriate rulings on such objections to questions or evidence as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying, the deposition or any part thereof may be submitted into evidence by any party to the proceeding. Only that part of a deposition that is received in evidence at a hearing shall constitute a part of the record in such proceeding upon which a decision may be based.
- (h) Payment of fees. The fees of the witness and of the reporter shall be paid by the person upon whose application the deposition was taken.

# § 509.24 Conduct of hearings.

(a) Hearing rules. Every party shall have the right to present its case or defense by oral and documentary evidence and to conduct such crossexamination as may be required for full disclosure of the facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Objections to the admission or exclusion of evidence shall be concise and, together with rulings thereon, become part of the record. Argument on objections may, at the discretion of the Administrative Law Judge, take place off the record. Failure to object to admission or exclusion of evidence or to any ruling shall constitute a waiver of the objection. The privileges of witnesses or parties shall be governed by the principles of the common law as such principles may be interpreted by the courts of the United States in light of reason and experience.

(b) Official notice. Official notice may be taken of any material fact that might be judicially noticed by a district court of the United States and of any material information in the official public records of the Office. All matters officially noticed by the Administrative Law Judge shall appear on the record. If official notice is requested or taken of any fact, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) Transcript of testimony. Hearings shall be recorded and transcripts will be made available to any party upon payment of the cost thereof. A copy of the transcript of the testimony taken at the hearing, duly certified by the reporter, together with all exhibits, shall be filed with the Administrative Law Judge, who shall file such materials with the Secretariat at the time he submits his recommended decision. The Administrative Law Judge shall have the authority to rule upon motions to correct the record.

(d) Continuances and changes or extensions of time and changes of place of hearing. Prior to the appointment of an Administrative Law Judge and after the filing of a recommended decision pursuant to § 509.27 of this part, except as otherwise expressly provided by law, the Office may in the notice or any subsequent order provide time limits different from those specified in this part and may, on its own initiative or for good cause shown, change or extend any time limit prescribed by these rules or the notice, or change the time and place for any hearing hereunder. The Administrative Law Judge may, as permitted by law, change the time for

beginning any hearing, continue or

adjourn a hearing from time to time, and change the location of the hearing.

(e) Call for further evidence, oral arguments, briefs, or reopening of hearing. The Administrative Law Judge may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at or following the hearing, and, upon appropriate notice, may reopen the hearing at any time prior to the filing of his recommended decision with the Secretariat.

#### § 509.25 Private and public hearings.

(a) All hearings shall be private and shall be attended only by the parties, their representatives or counsel, witnesses while testifying, and other persons having an official interest in the proceeding unless the Office determines that a public hearing should be held pursuant to this section. Unless an exception is granted by the Administrative Law Judge in response to a motion by a party, all witnesses shall

be sequestered.

(b) Unless otherwise ordered by the Office as provided in paragraph (c) of this section or required by law, the entire record in any proceeding under this part, including, but not limited to, the notice, answer, the transcript, exhibits, proposed findings of fact and conclusions of law, briefs, recommended decision of the Administrative Law Judge, exceptions thereto, the decision of the Office [except for the actual final order of the Officel, and any other papers and documents that are filed in connection with the proceeding shall not be made public, and shall be for the confidential use only of the Office and its staff, the Administrative Law Judge, the parties, and appropriate supervisory authorities.

(c) Where the Office, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest, the Office may order that the hearing be public. In any public hearing, the Administrative Law Judge shall have the authority to take all appropriate steps, including closing portions of the hearing to the public and admitting materials into the record under seal, to protect the reputation and integrity of any nonparties to the proceeding.

#### § 509.26 Summary disposition.

(a) Filing of motions and responses. Any party who believes that there is no genuine issue of material fact to be determined and that he is entitled to a decision as a matter of law may move for summary disposition in his favor of all or any part of the proceeding. Such

motion may be filed at any time. Any party, within 20 days after service of such a motion, or within such further time period as the Administrative Law Judge may allow, may serve an opposition to such motion and/or may countermove for summary disposition. Following receipt of a motion for summary disposition and all responses thereto and any further written submission and/or oral argument he deems appropriate, the Administrative Law Judge shall submit a recommended decision to the Office in accordance with the provisions of § 509.27(b) of this part and of paragraph (d) of this section if he finds that summary disposition is warranted. No such recommended decision need be filed with the Office if the Administrative Law Judge finds that no party is entitled to summary disposition. If the Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, he may defer submitting a recommended decision as to those claims until he files his recommended decision at the conclusion of the hearing. If the Administrative Law Judge determines that a party is entitled to an order based on the presence in one or more transaction(s) or occurrence(s) of all statutory elements necessary to support such an order, he may recommend that the Office issue such an order based on such transaction or occurrence even though he may make no such finding with respect to other transactions or occurrences contained in the notice.

(b) Supporting papers. A motion for summary disposition shall be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue, supported by documentary evidence, admissions in pleadings, stipulations, depositions, and any other evidentiary materials that the moving party contends support his position. The motion shall also be accompanied by a brief containing the points and authorities in support of the contention of the party making the motion. Any party opposing a motion for summary disposition shall file a statement setting forth those material facts as to which he contends a genuine dispute exists, supported by evidence of the same type required to be submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate. A party opposing a motion for summary disposition may argue that, although there is no dispute as to the material facts, the law is

unclear or contrary to the position urged by the moving party or that the circumstances are such that a different remedy or result is appropriate. In this event, the party's submission shall clearly set forth such legal differences or circumstances and a discussion of the appropriate result or remedy.

(c) Hearing on motion. At the request of any party or sua sponte, the Administrative Law Judge may convene a hearing on any motion for summary disposition for the purpose of receiving

oral argument on the motion.

(d) Recommended decision on motion. The Administrative Law Judge shall recommend that the Office issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, stipulations, documentary evidence, deposition transcripts, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with the motion show that:

 There is no genuine issue as to any material fact;

(2) There is no necessity that further facts be developed on the record; and

(3) The moving party is entitled to a decision in his favor as a matter of law.

# § 509.27 Proposed findings of fact and conclusions of law and recommended decision.

(a) Proposed findings of fact and conclusions of law. Each party shall have a period of 30 days after the submission of the hearing transcript to the Administrative Law Judge following the close of the hearing, or such further time as the Administrative Law Judge for good cause may allow, to serve proposed findings of fact and conclusions of law, which may be accompanied by a brief in support thereof. Such proposals shall be supported by citation of such statutes, decisions and other authorities, and page references to such portions of the record as may be relevant. Each party may serve a reply brief within 20 days of service of the other parties' proposed findings of fact and conclusions of law and accompanying briefs. All such proposals and briefs shall become a part of the record.

(b) Recommended decision and filing of record. The Administrative Law Judge shall, within 30 days after the expiration of the time allowed under paragraph (a) of this section, or within such further time as the Office for good cause may allow, file with the Secretariat and certify to the Office for decision the entire record of the hearing, which shall include his recommended decision in accordance with section 557 of Title 5 of

the United States Code, the transcript, and the exhibits (including, on request of any of the parties, any exhibits excluded from evidence or tenders of proof), exceptions, rulings, and all pleadings, briefs, and other materials filed in connection with the hearing. Promptly upon such filing, the Secretariat shall serve upon each party to the proceeding a copy of the recommended decision. The provisions of this paragraph (b) shall not apply in any case where the hearing was held before the Office.

#### § 509.28 Briefs.

(a) Contents. All briefs shall be confined to the particular matters in issue. Each proposed finding of fact, conclusion of law, or exception that is briefed shall be supported by a concise argument and by citation of such statutes, decisions, and other authorities and by page references to such portions of the record as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(b) Reply briefs. Reply briefs may be served within 20 days after service of original briefs of opposing parties, or such further time as the Administrative Law Judge may permit, and shall be confined to matters in opening briefs. Further briefs may be filed only with the express permission of the

Administrative Law Judge.

(c) Delayed filing. Briefs not served on or before the time fixed in this part will be received only upon special permission of the Administrative Law Judge.

#### § 509.29 Exceptions.

(a) Filing. Within 30 days after service of the recommended decision of the Administrative Law Judge or such further time as the Office for good cause shall allow, any party (other than a party who has not filed an answer in accordance with § 509.14(a) of this part). may serve and file with the Secretariat exceptions thereto or to any portion thereof, or the failure of the Administrative Law Judge to make any recommendation, finding, or conclusion. or to the admission or exclusion of evidence, or to any other ruling of the Administrative Law Judge supported by such brief as may appear advisable.

(b) Waiver. Failure of a party to serve and file exceptions to the recommended decision of the Administrative Law Judge or any portion thereof, or to his failure to adopt a proposed finding or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the Administrative Law Judge within the time allowed under paragraph (a) of this section, shall be deemed to be a waiver of objection thereto.

(c) Review by the Office on its own initiative. The Office may, on its own initiative, undertake review of a recommended decision of an Administrative Law Judge within 30 days after the recommended decision has been served on all parties. Notice of any order of the Office directing review on its own initiative shall be served on all parties by the Secretariat.

#### § 509.30 Oral argument before the Office.

Upon the Office's own initiative or upon the written request of any party made within the time for filing exceptions to the recommended decision (or any part thereof) of the Administrative Law Judge, the Office or its designee(s) may order and hear oral argument on all or any part of the recommended decision and the findings and conclusions on which the recommended decision or such part thereof is based. Such written request must show good cause for oral argument, including reasons why arguments have not been, or cannot be, presented adequately in writing. Oral argument before the Office shall be recorded by the Secretariat.

# § 509.31 Notice of submission to the Office.

Upon the filing of the record with the Secretariat, and upon the expiration of the time for the filing of exceptions and all briefs, including reply briefs or any further briefs permitted by the Office, and upon the hearing of any oral argument ordered by the Office, the Secretariat shall notify the parties in writing that the case has been submitted to the Office for final decision.

#### § 509.32 Decision of the Office.

(a) Employees of the Office who have not engaged in any way in the performance of investigatory or adjudicatory functions in connection with a proceeding may advise and assist the Office in the consideration of the proceeding. The Office shall consider the recommended decision and the whole record on review and shall base its determination thereon.

(b) The Office shall render its final decision within 90 days after the Secretariat has notified the parties, pursuant to § 509.31 of this part, that the case has been submitted to the Office for final decision, unless within such 90-day period the Office shall order that such notice be set aside and the case

reopened for further proceedings. Copies of the decision and order of the Office shall be served by the Secretariat upon each party to the proceeding and, if directed by the Office or required by statute, upon any appropriate State supervisory authority.

## Subpart B-Assessment of Civil **Money Penalties**

#### § 509.33 Scope.

The rules and procedures in this subpart B and in subpart A shall apply

(a) Proceedings under section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2), section 18(j)(4) of the FDIA, 12 U.S.C. 1828(j)(4), section 10(i)(3) of the HOLA, 12 U.S.C. 1467a(i)(3) and section 7(j)(16) of the FDIA, 12 U.S.C. 1817(j)(16), to determine whether and/or to what extent civil penalties should be assessed against associations, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials or institution-affiliated parties for violation of any regulation, law, order, written agreement, condition imposed in writing by the Office in connection with the grant of any application, or in the conduct of any unsafe or unsound practice in conducting the affairs of the association or breach of any fiduciary duty that is a part of a pattern of misconduct that causes or is likely to cause more than a minimal loss to the savings association or results in pecuniary gain or other benefit to such party;

(b) Proceedings under section 9(d) of the HOLA, 12 U.S.C. 1467(d), to determine whether and/or to what extent civil penalties should be assessed against any savings association for failure of the association's affiliate to permit any examiner appointed by the Director to make an examination or failure to provide any information required to be disclosed in the

examination; and

(c) Proceedings under section 5(v) of the HOLA, 12 U.S.C. 1464(v) and section 10(r)(5) of the HOLA, 12 U.S.C. 1467a(r)(5) to determine whether penalties should be assessed against associations, affiliates, service corporations, savings and loan holding companies, subsidiaries thereof and/or related officials for submission of false or inaccurate information to the Office.

#### § 509.34 Notice of assessment; request tor hearing; answer.

Proceedings to assess civil money penalties shall be commenced by service of a notice of assessment of civil money penalty. The notice shall contain a statement of the facts constituting the

grounds for the assessment of the penalty, the amount of the civil money penalty being assessed, and the date by which the penalty must be paid and shall inform the party being assessed of its right to request a hearing to challenge the assessment of the penalty within 10 days of service of the notice. If a hearing is not requested within the prescribed 10 day period, the assessment shall constitute a final and unappealable order of the Office. A party requesting a hearing shall file an answer as prescribed in § 509.14 of this part.

# § 509.35 Notice of hearing.

A party requesting a hearing shall be informed by notice of the time and place set for the hearing. The notice of hearing shall be served at least 30 days in advance of the date set for the hearing and shall order the hearing to commence within 60 days after receipt of the request for a hearing. Any party afforded a hearing who does not appear at the hearing personally or through a duly authorized representative shall be deemed to have consented to the issuance of an assessment order.

#### § 509.36 Assessment orders.

In the event of consent, or if upon the record developed at the hearing, the Office finds that any of the grounds specified in the notice of assessment have been established, the Office may serve an order of assessment of civil money penalty upon the party concerned. An assessment order shall be effective immediately upon service or upon such other date as may be specified therein and shall remain . effective and enforceable until it is stayed, modified, terminated, or set aside by the Office or by a reviewing

#### § 509.37 Payment of civil penalty.

(a) Civil penalties assessed pursuant to this subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Office fixes a different time for payment where it determines that the purpose of the penalty would be better served thereby; provided, however, that if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party shall not be required to pay such penalty until the Office has issued a final order of assessment following the hearing. In such cases, the penalty shall be paid within 60 days of service of such order unless the Office fixes a different time for payment.

(b) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Office. Upon receipt, the Office shall forward the check to the Treasury of the United

#### § 509.38 Relevant considerations.

In determining the amount of the penalty to be assessed in any proceeding under this part, the Office shall consider the financial strength and good faith of the party against whom the penalty is to be assessed, the gravity of the violation, any previous violations, and such other matter as justice may require.

#### PART 510-MISCELLANEOUS ORGANIZATIONAL REGULATIONS

Sec.

510.1 Provisions relating to ex parte communications.

510.2 Provisions related to regulations of the Office.

Coordination of subchapters. 510.3 510.4 Service of process.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1483); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

#### § 510.1 Provisions relating to ex parte communications.

(a) Scope of section. This section shall apply to ex parte communications with respect to applications made to the Office for permission to organize Federal savings associations and for branch office and mobile facilities of such associations under Subchapter C of this chapter, applications to convert under Subchapter D of this chapter, and to ex parte communications with respect to any matter which is the subject of a hearing conducted by or on behalf of the Office. However, this section shall not apply to ex parte communications with respect to those applications as to which public notice is not required; and this section shall not apply to ex parte communications with respect to any hearing which is subject to the provisions of Part 509 of this subchapter, which communications shall be handled in accordance with applicable law.

(b) Prohibited communications. Except as provided in paragraph (c) of this section, any ex parte communication, either written or oral, relating to any matter within the scope of this section, by any person, other than an officer, agent, or employee of the Office, a hearing officer, or any other employee or agent of the Office participating in the decisional process, is prohibited prior to final decision on such

matter.

(c) Exceptions. The provisions of this section shall not apply to communications on the subject matter of

any hearing on the proposed adoption or repeal of, or amendment to, rules or regulations, to inquiries limited exclusively to the status of a pending matter or directed only to procedural questions, to reports or investigations made at the Office's request by or at the request of an officer, agent, or employee of the Office, communications and other material filed pursuant to the regulations in this chapter governing the applications and requests referred to in paragraph (a) of this section, or communications from authorities having governmental examining or supervisory functions relating to savings associations, building and loan, and homestead associations or cooperative

(d) Action to be taken. (1) The recipient of any written communication made in contravention of the provisions of this section shall promptly transmit such communication to the Secretary to the Office. The recipient of any oral communication made in contravention of the provisions of this section shall immediately prepare a written statement of the substance of the communication and promptly transmit such statement to such Secretary. Such transmittal shall be accompanied by a written statement of the circumstances under which the communication was made, if such circumstances are not otherwise

(2) The Secretary to the Office shall place all material so transmitted to him in the public record, and shall transmit copies of all such material to all interested parties for comment or rebuttal. Any such comment or rebuttal by any person shall be delivered to the Office of the Secretary to the Office within 10 days after such transmittal to such person, unless the Office shall otherwise provide, and shall be placed by such Secretary in the public record. The Office may provide for such other or further action with respect to any such communication as it may deem advisable.

(3) The references in paragraphs (d)(1) and (d)(2) of this section to "Secretary to the Office" and "Office of the Secretary to the Office" shall be deemed to be references to "District Director" in the case of a communication made with respect to an application or request within the scope of this section at a time when such application or request is in the Office of a District Director. As used in this paragraph (d)(3), the term "District Director" shall mean the agent of the Office who is processing such an application or request.

(e) Sanctions. A violation of any of the provisions of this section shall be good cause for imposition of such sanctions as the Office may deem just and proper.

# § 510.2 Provisions related to regulations of the Office.

(a) Amendments. The Office expressly reserves the right to amend (including the right to alter or repeal) the regulations set forth in Subchapters A, B, C, D, E, F, and G of this chapter.

(b) Waiver or relaxation of regulatory provisions with respect to disaster or emergency areas. Whenever the President of the United States determines that a major disaster or emergency exists, or declares an area a major disaster or emergency area, the Office may, to the extent not inconsistent with law, by resolution waive or relax any limitations pertaining to the operations of Federal savings associations and savings associations in any area or areas affected by such disaster or emergency so declared.

(c) Bar on participation in notice and comment rulemaking by suspended or disbarred persons. No person who has been suspended or debarred from practice before the Office in accordance with the provisions of Part 513 of this subchapter may submit to the Office, either directly or on behalf of an interested party, any written documents or petitions otherwise permitted by the Administrative Procedures Act.

#### § 510.3 Coordination of subchapters.

This subchapter shall be applied in conjunction with any related provisions of Subchapters B, C, D, E, F, and G of this chapter together with such other material not inconsistent therewith as may be filed now or hereafter by the Office pursuant to section 5, 49 Stat. 501, 44 U.S.C. 305, and sections 3 and 4, 60 Stat. 238, 5 U.S.C. 1002, 1003.

# § 510.4 Service of process.

(a) Service of Process. Service of process may be made upon the Office by delivering a copy of the summons and complaint to the U.S. Attorney for the district in which the action is brought or to an assistant U.S. Attorney or clerical employee designated by the U.S. Attorney in a writing filed with the clerk of the court, and by sending copies of the summons and of the complaint by registered or certified mail to the Attorney General of the United States, Washington, DC., and to the Secretary of the Office.

(b) Subpoenas. Any subpoena to obtain information maintained by Office shall be duly issued and served upon the Secretary of the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC., 20552.

#### PART 512—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

Sec.

512.1 Scope of part.

512.2 Definitions.

512.3 Confidentiality of proceedings.

512.4 Transcripts.

512.5 Rights of witnesses.

512.6 Obstruction of the proceedi.ngs.

512.7 Subpoenas.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 78 I).

# § 512.1 Scope of part.

This part prescribes rules of practice and procedure applicable to the conduct of investigative proceedings under section 10(g)(2) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1467a(g)(2) ("HOLA") and to the conduct of formal examination proceedings with respect to savings associations and their affiliates under section 5(d)(1)(B) of the HOLA, as amended, 12 U.S.C. 1464(d)(1)(B) or section 7(j)(15) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1817(j)(15) ("FDIA"), section 8(n) of the FDIA, 12 U.S.C. 1818(n), or section 10(c) of the FDIA, 12 U.S.C. 1820(c). This part does not apply to adjudicatory proceedings as to which hearings are required by statute, the rules for which are contained in Part 509 of this subchapter.

#### § 512.2 Definitions.

As used in this part:

- (a) Office means the Office of Thrift Supervision;
- (b) Investigative proceeding means an investigation conducted under section 10(g)(2) of the HOLA;
- (c) Formal examination proceeding means the administration of oaths and affirmations, taking and preserving of testimony, requiring the production of books, papers, correspondence, memoranda, and all other records, the issuance of subpoenas, and all related activities in connection with examination of savings associations and their affiliates conducted pursuant to section 5(d)(1)(B) of the HOLA, section 7(j)(15) of the FDIA, section 8(n) of the FDIA or section 10(c) of the FDIA; and
- (d) Designated representative means the person or persons empowered by the Office to conduct an investigative

proceeding or a formal examination proceeding.

#### § 512.3 Confidentiality of proceedings.

All formal examination proceedings shall be private and, unless otherwise ordered by the Office, all investigative proceedings shall also be private. Unless otherwise ordered or permitted by the Office, or required by law, and except as provided in §§ 512.4 and 512.5, the entire record of any investigative proceeding or formal examination proceeding, including the resolution of the Office or its delegate(s) authorizing the proceeding, the transcript of such proceeding, and all documents and information obtained by the designated representative(s) during the course of said proceedings shall be confidential.

# § 512.4 Transcripts.

Transcripts or other recordings, if any, of investigative proceedings or formal examination proceedings shall be prepared solely by an official reporter or by any other person or means authorized by the designated representative. A person who has submitted documentary evidence or given testimony in an investigative proceeding or formal examination proceeding may procure a copy of his own documentary evidence or transcript of his own testimony upon payment of the cost thereof; provided, that a person seeking a transcript of his own testimony must file a written request with the Director or any Deputy Director of Enforcement stating the reason he desires to procure such transcript, and said persons may for good cause deny such request. In any event, any witness (or his counsel) shall have the right to inspect the transcript of the witness' own testimony.

#### § 512.5 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or give testimony at an investigative proceeding or formal examination proceeding shall have the right to examine, upon request, the Office resolution authorizing such proceeding. Copies of such resolution shall be furnished, for their retention, to such persons only with the written approval of the Director or any Deputy Director of Enforcement.

(b) Any witness at an investigative proceeding or formal examination proceeding may be accompanied and advised by an attorney personally representing that witness.

(1) Such attorney shall be a member in good standing of the bar of the highest court of any state, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or debarred from practice by the bar of any such political entity or before the Office in accordance with the provisions of Part 513 of this subchapter and has not been excluded from the particular investigative proceeding or formal examination proceeding in accordance with paragraph (b)(3) of this section.

(2) Such attorney may advise the witness before, during, and after the taking of his testimony and may briefly question the witness, on the record, at the conclusion of his testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for his use in representing his client. All witnesses shall be sequestered, and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be permitted to be present during the taking of testimony of any other witness called in such proceeding. Neither attorney(s) for the association(s) that are the subjects of the investigative proceedings or formal examination proceedings, nor attorneys for any other interested persons, shall have any right to be present during the testimony of any witness not personally being represented by such attorney.

(3) The Office, for good cause, may exclude a particular attorney from further participation in any investigation in which the Office has found the attorney to have engaged in dilatory, obstructionist, egregious, contemptuous or contumacious conduct. The person conducting an investigation may report to the Office instances of apparently dilatory, obstructionist, egregious, contemptuous or contumacious conduct on the part of an attorney. After due notice to the attorney, the Office may take such action as the circumstances warrant based upon a written record evidencing the conduct of the attorney in that investigation or such other or additional written or oral presentation as the Office may permit or direct.

# § 512.6 Obstruction of the proceedings.

The designated representative shall report to the Office any instances where any witness or counsel has engaged in dilatory, obstructionist, or contumacious conduct or has otherwise violated any provision of this part during the course of an investigative proceeding or formal examination proceeding; and the Office may take such action as the circumstances warrant, including the exclusion of counsel from further participation in such proceeding.

#### § 512.7 Subpoenas.

(a) Service. Service of a subpoena in connection with any investigative proceeding or formal examination proceeding shall be effected in the following manner:

(1) Service upon a natural person. Service of a subpoena upon a natural person may be effected by handing it to such person; by leaving it at his office with the person in charge thereof, or, if there is no one in charge, by leaving it in a conspicuous place therein; by leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing it to him by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to him.

(2) Service upon other persons. When the person to be served is not a natural person, service of the subpoena may be effected by handing the subpoena to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; by mailing it to any such representative by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to such person.

(b) Motions to quash. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the Director or any Deputy Director of Enforcement to quash or modify such subpoena, accompanying such application with a statement of the reasons therefor. The Director or the Deputy Director, as appropriate, may:

(1) Deny the application;

(2) Quash or revoke the subpoena;(3) Modify the subpoena; or

(4) Condition the granting of the application on such terms as the Director or Deputy Director determines to be just, reasonable, and proper.

(c) Attendance of witnesses. Subpoenas issued in connection with an investigative proceeding or formal examination proceeding may require the attendance and/or testimony of witnesses from any State or territory of the United States and the production by such witnesses of documentary or other tangible evidence at any designated place where the proceeding is being (or is to be) conducted. Foreign nationals are subject to such subpoenas if such service is made upon a duly authorized agent located in the United States.

(d) Witness fees and mileage.
Witnesses summoned in any proceeding

under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Such fees and mileage need not be tendered when the subpoena is issued on behalf of the Office by any of its designated representatives.

#### PART 513-PRACTICE BEFORE THE **OFFICE**

Scope of part. Definitions. 513.1

513.2

Who may practice. 513.3

513.4 Suspension and debarment.

513.5 Reinstatement.

Duty of file information concerning adverse judicial or administrative action. 513.7 Proceeding under this part.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 [12 U.S.C. 14622]; sec. 4, as added by sec. 301, 103 Stat. 280 [12 U.S.C. 1463]; sec. 5, 48 Stat. 132, as amended [12 U.S.C. 1464]; sec. 12, sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); 48 Stat. 892, as amended (15 U.S.C. 78 1).

#### § 513.1 Scope of part.

This part prescribes rules with regard to general practice before the Office on one's own behalf or in a representative capacity and prescribes rules describing the circumstances under which attorneys, accountants, appraisers, or other persons may be suspended or debarred, either temporarily or permanently, from practicing before the Office. In connection with any particular matter, reference also should be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Office thereunder, which special requirements are controlling. In addition to any suspension hereunder, a person may be excluded from further participation under this subchapter from a rulemaking hearing in accordance with § 510.2, from an adjudicatory proceeding in accordance with § 509.5(a)(2), from a removal hearing in accordance with § 508.3, or from an investigatory proceeding in accordance with § 512.5(b)(2) of this subchapter.

#### § 513.2 Definitions.

As used in this part:

(a) Office means the Office;

(b) The term Secretary means the Secretary and any Assistant or Acting Secretary to the Office;

(c) The term presiding officer includes the Office, his delegatee or an administrative law judge appointed under section 3105 or detailed pursuant to section 3344 of title 5 of the U.S. Code and, as used in this part, the term shall be construed to refer to whichever of the above-identified individuals presides at

a hearing or other proceeding, except as otherwise specified in the text;

(d) The term attorney means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia; and

(e) The term practice means transacting any business with the

Office, including:

(1) The representation of another person at any adjudicatory, investigatory, removal or rulemaking proceeding conducted before the Office, a presiding officer or the Office's staff, including those proceedings covered in Parts 508, 509, 510, and 512 of this subchapter;

(2) The preparation of any statement, opinion, financial statement, appraisal report, audit report, or other document or report by any attorney, accountant, appraiser or other licensed expert which is filed with or submitted to the Office, with such expert's consent or knowledge in connection with any application or other filing with the Office;

(3) A presentation to the Office, a presiding officer or the Office's staff at a conference or meeting relating to an association's or other person's rights, privileges or liabilities under the laws administered by the Office and rules and regulations promulgated thereunder;

(4) Any business correspondence or communication with the Office, a presiding officer or the Office's staff; and

(5) The transaction of any other formal business with the Office on behalf of another, in the capacity of an attorney, accountant, appraiser or other licensed expert.

#### § 513.3 Who may practice.

(a) By non-attorneys-(1) An individual may appear on his own behalf (pro se); a member of a partnership may represent the partnership; a bona fide and duly authorized officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a commission, department or political subdivision may represent that commission, department or political subdivision before the Office.

(2) Any accountant, appraiser or other licensed expert may practice before the Office in a professional capacity

(b) By attorneys. Any association or other person may be represented in any proceeding or other matter before the Office by an attorney.

(c) Any licensed expert or professional transacting business with the Office in a representative capacity

may be required to show his authority to act in such capacity.

## § 513.4 Suspension and debarment.

- (a) The Office may censure any person practicing before it or may deny, temporarily or permanently, the privilege of any person to practice before it if such person is found by the Office, after notice of and opportunity for hearing in the matter,
- (1) Not to possess the requisite qualifications to represent others,
- (2) To be lacking in character or professional integrity.
- (3) To have engaged in any dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper professional conduct before the Office, or
- (4) To have willfully violated, or willfully aided and abetted the violation of, any provision of the laws administered by the Office or the rules and regulations promulgated thereunder.
- (b) Automatic suspension. (1) Any person who, after being licensed as a professional or expert by any competent authority, has been convicted of a felony, or of a misdemeanor involving moral turpitude, personal dishonesty or breach of trust, shall be suspended forthwith from practicing before the Office.
- (2) Any accountant, appraiser or other licensed expert whose license to practice has been revoked in any State, possession, territory, Commonwealth or the District of Co1umbia, shall be suspended forthwith from practice before the Office.
- (3) Any attorney who has been suspended or disbarred by a court of the United States or in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended forthwith from practicing before the Office.
- (4) A conviction (including a judgment or order on a plea of nolo contendere), revocation, suspension or disbarment under paragraphs (b)(1), (b)(2) and (b)(3) of this section shall be deemed to have occurred when the convicting, revoking, suspending or disbarring agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken.
- (5) For purposes of this section, it shall be irrelevant that any attorney, accountant, appraiser or other licensed expert who has been suspended, disbarred or otherwise disqualified from practice before a court or in a jurisdiction continues in professional good standing before other courts or in other jurisdictions.

(c) Temporary suspension. (1) The Office, with due regard to the public interest and without preliminary hearing, by order, may temporarily suspend any person from appearing or practicing before it who, on or after June

20, 1984, by name, has been:

(i) Permanently enjoined (whether by consent, default or summary judgment or after trial) by any court of competent jurisdiction or by the Office itself in a final administrative order, by reason of his misconduct in any action brought by the Office based upon violations of, or aiding and abetting the violation of, the Home Owners, Loan Act of 1933, as amended, 12 U.S.C. 1461 et seq., the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 et seq. or any provision of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a, et seq., which is administered by the Office, or of any rule or regulation promulgated thereunder, or

(ii) Found by any court of competent jurisdiction (whether by consent, default, or summary judgment, or after trial) in any action brought by the Office to which he is a party or found by the Office (whether by consent, default, upon summary judgment or after hearing) in any administrative proceeding in which the Office is a complainant and he is a party, to have willfully committed, caused or aided or abetted a violation of any provision of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1461 et seq., the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 et seq. or any provision of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a, et seq., which is administered by the Office, or of any rule or regulation promulgated thereunder.

(2) An order of temporary suspension shall become effective when served by certified or registered mail directed to the last known business or residential address of the person involved. No order of temporary suspension shall be entered by the Office pursuant to paragraph (c)(1) of this section more than three months after the final judgment or order entered in a judicial or administrative proceeding described in paragraphs (c)(1)(i) or (c)(1)(ii) of this section has become effective and all review or appeal procedures have been completed or are no longer available.

(3) Any person temporarily suspended from appearing and practicing before the Office in accordance with paragraph (c)(1) of this section may, within 30 days after service upon him of the order of temporary suspension, petition the Office to lift such suspension. If no petition is received by the Office within

those 30 days, the suspension shall become permanent.

(4) Within 30 days after the filing of a petition in accordance with paragraph (c)(3) of this section, the Office shall either lift the temporary suspension or set the matter down for hearing at a time and place to be designated by the Office, or both. After opportunity for hearing, the Office may censure the petitioner or may suspend the petitioner from appearing or practicing before the Office temporarily or permanently. In every case in which the temporary suspension has not been lifted, the hearing and any other action taken pursuant to this paragraph (c)(4) shall be expedited by the Office in order to ensure the petitioner's right to address

the allegations against him.

(5) In any hearing held on a petition filed in accordance with paragraph (c)(3) of this section, a showing that the petitioner has been enjoined or has been found to have committed, caused or aided or abetted violations as described in paragraph (c)(1) of this section, without more, may be a basis for suspension or debarment; that showing having been made, the burden shall then be on the petitioner to show why he should not be censured or be temporarily or permanently suspended or debarred. A petitioner will not be permitted to contest any findings against him or any admissions made by him in the judicial or administrative proceedings upon which the proposed censure, suspension or debarment is based. A petitioner who has consented to the entry of a permanent injunction or order as described in paragraph (c)(1)(i) of this section, without admitting the facts set forth in the complaint, shall nevertheless be presumed for all purposes under this section to have been enjoined or ordered by reason of the misconduct alleged in the complaint.

# § 513.5 Reinstatement.

(a) Any person who is suspended from practicing before the Office under paragraphs (a) or (c) of § 513.4 of this part may file an application for reinstatement at any time. Denial of the privilege of practicing before the Office shall continue unless and until the applicant has been reinstated by order of the Office for good cause shown.

(b) Any person suspended under paragraph (b) of § 513.4 shall be reinstated by the Office, upon appropriate application, if all of the grounds for application of the provisions of paragraph (b) of § 513.4 subsequently are removed by a reversal of the conviction or termination of the suspension, disbarment or revocation. An application for reinstatement on any

other grounds by any person suspended under paragraph (b) of § 513.4 may be filed at any time. Such application shall state with particularity the relief desired and the grounds therefor and shall include supporting evidence, when available. The applicant shall be accorded an opportunity for an informal hearing in the matter, unless the applicant has waived a hearing in the application and, instead, has elected to have the matter determined on the basis of written submissions. Such hearing shall utilize the procedures established in § 509a.3 and paragraph (a) of § 509a.7 of this subchapter. However, such suspension shall continue unless and until the applicant has been reinstated by order of the Office for good cause shown.

## § 513.6 Duty to file information concerning adverse judicial or administrative action.

Any person appearing or practicing before the Office who has been or is the subject of a conviction, suspension, debarment, license revocation, injunction or other finding of the kind described in § 513.4 (b) or (c) of this part in an action not instituted by the Office shall promptly file a copy of the relevant order, judgment or decree with the Secretary to the Office together with any related opinion or statement of the agency or tribunal involved. Any person who fails to so file a copy of the order, judgment or decree within 30 days after the later of June 15, 1984, the entry of the order, judgment or decree, or the date such person initiates practice before the Office, for that reason alone may be disqualified from practicing before the Office until such time as the appropriate filing shall be made, but neither the filing of these documents nor the failure of a person to file them shall in any way impair the operation of any other provision of this part.

# § 513.7 Proceeding under this part.

(a) All hearings required or permitted to be held under paragraphs (a) and (c) of § 513.4 of this part shall be held before a presiding officer utilizing the procedures established in the rules of practice and procedure in adjudicatory proceedings under Part 509 of this subchapter.

(b) All hearings held under this part shall be closed to the public unless the Office on its own motion or upon the request of a party otherwise directs.

(c) Any proceeding brought under any section of this Part 513 shall not preclude a proceeding under any other section of this part or any other part of the Office's regulations.

Sec

515.1 Purpose and scope.

515.2 Contact person for missing children photographs on penalty mail.

515.3 Policy and implementation.

515.4 Responsibility of Office administrative unit for implementation and procedure governing use of penalty mail in location of missing children.

515.5 Exceptions to use of missing children photographs and biographical data on penalty mail.

515.6 Expiration date.

Authority: Sec. 1, 99 Stat. 290 (39 U.S.C. 3220).

#### § 515.1 Purpose and scope.

The purpose of this part is to assist in the location and recovery of missing children through the use of Office penalty mail. This part is issued by the Office pursuant to the requirements of section 1(a) of Pub. L. 99–87, 99 Stat. 290 (1985), which adds a new section 3220 to Title 39, United States Code. This part likewise complies with the Department of Justice, Office of Juvenile Justice and Delinquency Prevention ("OJJDP") guidelines, 50 FR 46622 (1985), promulgated under the authority of section 3220(a)(1) of Title 39, United States Code.

# § 515.2 Contact person for missing children photographs on penalty mail.

The Office contact person for missing children photographs on penalty mail is:

Director, Financial and Administrative Systems, Management Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Telephone No. (202) 906–6222.

# § 515.3 Policy and implementation.

(a) The Office will support the national effort to assist in the location and recovery of missing children by utilizing photographs and biographical data of missing children in penalty mail sent out by the Office.

(b) The Office will implement the use of missing children photographs and biographical data in penalty mail by the most efficient and cost effective method.

This method may include:

(1) The printing of missing children photographs and biographical data on penalty mail envelopes at the time they are initially printed on behalf of the Office;

(2) Overprinting of such photographs and data on existing Office franked

penalty mail envelopes;

(3) Manual or automated insertion of such photographs and data into Office franked penalty mail envelopes prior to mailing; or (4) Affixing of stickers containing such photographs and data onto Office franked penalty mail prior to mailing.

(c) The use of missing children photographs and biographical data in accordance with § 515.3(a) shall be restricted to the following types of envelopes when franked for Office use as penalty mail:

(1) Standard letter-size envelopes

(41/4"×91/2").

(2) Document-size envelopes (9½"× 12, 9½"×12½", 10"×13").

(3) Other sizes of envelopes if franked for Office use and normally used as

penalty mail.

(d)(1) Missing children photographs and biographical data affixed by whatever method described herein on standard letter-size envelopes as referred to in § 515.3(c)(1) shall be positioned in accordance with the illustration in Appendix A of the OJJDP guidelines published on November 8, 1985, in the Federal Register (50 FR 46622, 46625).

(2) Missing children photographs and biographical data affixed by whatever method described herein on document-size or other sizes of envelopes referred to in § 515.3(c)(2) and (c)(3) shall be positioned in such a manner as to comport with the illustration in Appendix A of the OJJDP guidelines to

the extent possible.

(e) The Office will obtain missing children photographs and biographical data exclusively from the National Center for Missing and Exploited Children ("National Center") and will utilize such photographs and data in accordance with the Federal Schedule for Photographs promulgated by the National Center.

(I) The Office will discontinue the use of any particular child's photograph or biographical data within three months after receiving written notification from the National Center that the photograph and biographical data should be withdrawn from penalty mail dissemination.

§ 515.4 Responsibility of Office administrative unit for implementation and procedure governing use of panalty mall in location of missing children.

(a) The Financial and Administrative Systems Division ("FAS") of the Management Office will be the Office's administrative unit responsible for the implementation of this part and will act as the liaison between the Office and the National Center regarding the use of missing children photographs and biographical data. FAS shall:

 Develop any necessary plans or guidelines, and implement and monitor the use of missing children photographs and biographical data on penalty mail. Said plans or guidelines shall comply with OJJDP guidelines (50 FR at 46624), and seek to maximize the opportunities for the use of penalty mail to aid in the recovery of missing children.

(2) Procure all appropriate photographs and data from the National Center in accordance with said Center's protocol for the printing, overprinting on, insertion into, or affixing to penalty mail pursuant to this part.

(3) Remove any photograph or data from circulation through Office penalty mail whenever notified by the National

Center.

(4) Collect, consolidate, and analyze cost, mail volume, and other data related to implementation of this part and submit a report on behalf of the Office to OJJDP by June 30, 1987, concerning the Office's experience in implementation, estimated total cost of implementation, and recommendations.

(5) Provide guidance, assistance, and any logistical support to any Office administrative unit in order to successfully implement the Office's use of missing children photographs and biographical data on penalty mail.

(b) Office administrative unit managers, particularly Senior Deputy Directors and Division Directors, shall be responsible for ensuring maximum appropriate use, by their administrative units, of penalty mail containing missing children photographs and biographical data.

# § 515.5 Exceptions to use of missing children photographs and biographical data on penalty mail.

The Director of the Office's
Management Office is empowered to
make a determination, consistent with
the policy underlying section 320(a)(2),
Title 39, United States Code, and OJJDP
guidelines, that any particular Office
envelope or publication sent by penalty
mail is inappropriate for association
with missing children photographs and
biographical data, based on the contents
or context of said envelope or
publication.

#### § 515.6 Expiration date.

This part is effective May 8, 1987, and shall cease to be effective upon the close of the Office's business on December 31, 1992.

SUBCHAPTER B—CONSUMER-RELATED REGULATIONS

# PART 528—NONDISCRIMINATION REQUIREMENTS

ec.

528.1 Definitions.

528.1a Supplementary guidelines.

Sec.

528.2 Nondiscrimination in lending and other services.

528.2a Nondiscriminatory appraisal and underwriting.

528.3 Nondiscrimination in applications.528.4 Nondiscriminatory advertising.

528.5 Equal Housing Lender Poster.528.6 Monitoring information.

528.7 Nondiscrimination in employment.

528.8 Complaints.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 302, 89 Stat. 1125, as amended (12 U.S.C. 2801 et seq.); secs. 802–806, 91 Stat. 1147–1148 (12 U.S.C. 2901 et seq.); sec. 701, as added by sec. 503, 88 Stat. 1521 (15 U.S.C. 1691); sec. 16, 16 Stat. 144, as amended (42 U.S.C. 1981); sec. 1, 14 Stat. 27, as amended (42 U.S.C. 1982); secs. 801–619, 82 Stat. 81–89, as amended (42 U.S.C. 3601–3619); EO 11063, 27 FR 11527.

#### § 528.1 Definitions.

As used in this Part 528-

(a) Application. For purposes of this part and § 571.24, an application for a loan or other service is as defined in Regulation B, 12 CFR 202.2(f).

(b) Savings association. The term "savings association" means any savings association as defined in \$ 561.43 of this chapter other than a State-chartered savings bank whose deposits are insured by the Bank

Insurance Fund.

(c) Dwelling. The term "dwelling" means any building, structure, or portion thereof, including a mobile home, which is occupied, or designed or intended for occupancy, as a residence by one or more individuals, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof. "Dwelling-related" means secured by a dwelling, regardless of the purpose of the loan or transaction, or intended for purposes related to a dwelling.

(d) Decision center. The term
"decision center" means a savings
association's office where decisions are
made to approve (on terms requested or
as changed), or take any adverse action
on applications for dwelling-related

loans.

# § 528.1a Supplementary guidelines.

The Office's § 571.24 policy statement supplements should be read together with part 528. Refer also to the HUD Fair Housing regulations at 24 CFR parts 100 et seq. and Federal Reserve Regulation B at 12 CFR part 202.

# § 528.2 Nondiscrimination in lending and other services. (See also, § 571.24 (b) and (c).)

(a) No savings association may deny a loan or other service, or discriminate in the purchase of loans or securities or discriminate in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of such loan or other service on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract) or national origin of:

(1) An applicant or joint applicant; (2) Any person associated with an applicant or joint applicant regarding such loan or other service, or with the purposes of such loan or other service;

(3) The present or prospective owners, lessees, tenants, or occupants of the dwelling(s) for which such loan or other service is to be made or given;

(4) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling(s) for which such loan or other service is to be made or given.

(b) A savings association shall consider without prejudice the combined income of joint applicants for

a loan or other service.

(c) No savings association may discriminate against an applicant for a loan or other service on any prohibited basis (as defined in 12 CFR 202.2(z) and 24 CFR part 100).

# § 528.2a Nondiscriminatory appraisal and underwriting. (See also, § 571.24 (b), (c)(6), and (c)(7).)

(a) Appraisal. No savings association may use or rely upon an appraisal of a dwelling which the savings association knows, or reasonably should know, is discriminatory on the basis of the age or location of the dwelling, or is discriminatory per se or in effect under the Fair Housing Act of 1968 or the Equal Credit Opportunity Act.

(b) Underwriting, Each savings association shall have clearly written, nondiscriminatory loan underwriting standards, available to the public upon request, at each of its offices. Each association shall, at least annually, review its standards, and business practices implementing them, to ensure equal opportunity in lending.

# § 528.3 Nondiscrimination in applications. (See also, § 571.24 (a) through (d).)

(a) No savings association may discourage, or refuse to allow, receive, or consider, any application, request, or inquiry regarding a loan or other service, or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on the basis of the age or location of the dwelling, or on the basis of the race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), national origin, or other characteristics prohibited from consideration in § 528.2(c) of this part, of the prospective borrower or other person, who:

(1) Makes application for any such loan or other service;

(2) Requests forms or papers to be used to make application for any such loan or other service; or

(3) Inquiries about the availability of such loan or other service.

(b) A savings association shall inform each inquirer of his or her right to file a written loan application, and to receive a copy of the association's underwriting standards.

#### § 528.4 Nondiscriminatory advertising.

No savings association may directly or indirectly engage in any form of advertising which implies or suggests a policy of discrimination or exclusion in violation of title VIII of the Civil Rights Act of 1968, the Equal Credit Opportunity Act, or this part 528. Advertisements, other than for savings, shall include a facsimile of the following logotype and legend:



# EQUAL HOUSING LENDER

#### § 528.5 Equal Housing Lender Poster.

(a) Each savings association shall post and maintain one or more Equal Housing Lender Posters, the text of which is prescribed in paragraph (b) of this section, in the lobby of each of its offices in a prominent place or places readily apparent to all persons seeking loans. The poster shall be at least 11 by 14 inches in size, and the text shall be easily legible. It is recommended that savings associations post a Spanish language version of the poster in offices

serving areas with a substantial Spanish-speaking population.
(b) The text of the Equal Housing

Lender Poster shall be as follows:



We Do Business In Accordance With Federal Fair Lending Laws.

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18) TO:

Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or to deny any loan

secured by a dwelling; or

[ ] Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan or in appraising property

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD: SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC

For processing under the Federal Fair Housing Act AND TO:

Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552.

For processing under Office of Thrift Supervision Regulations

UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

] On the basis of race, color, national origin, religion, sex, martial status, or age;

Because income is from public assistance; or

] Because a right has been exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552.

# § 528.6 Monitoring Information.

(a) Information to be requested. (1) Each savings association which receives an in-person or written application from a natural person for a loan related to a dwelling shall request, but not require, either on the application form or a form referring to the application, the following information regarding the applicant and joint applicant (if any):

(i) Race/national origin, using the categories American Indian or Alaskan Native: Asian or Pacific Islander; Black; White; Hispanic; Other (specify);

(ii) Sex;

(iii) Marital status, using the categories married, unmarried, and separated; and

(iv) Age.

(b) If the applicant(s) choose not to provide the information or any part of it, that fact shall be noted on the monitoring form, and the savings association shall, to the extent possible, on the basis of sight and/or surname, designate race and sex of each loan applicant and joint applicant.

(c) Disclosure notice. Any form used to collect monitoring information required by paragraph (a) of this section shall contain a written notice that such information is requested by the Federal government to monitor compliance with Federal statutes which prohibit savings association from discriminating on those bases against applicants for a loan or other service, and that the savings association is required to note race and sex, on the basis of sight and/or surname, if the applicant(s) choose not to do so.

(d) Loan application registers.—(1) General. For examination purposes, each savings association shall maintain, at each of its decision centers (defined in § 528.1 of this part), separate, current, readily accessible loan application registers for each of the following loan

types made: one-to-four-family dwelling loans, mobile home loans, and home improvement and/or equipping loans.

(2) Data required on all registers. Information recorded on applicable registers shall be entered in accordance with instructions issued by the Office, and at a minimum include, for all registers, the following data:

(i) Loan Identification. Loan Purpose, Application Number, Date of Application (Month, Day, and Year), and

Loan Number;

(ii) Loan Disposition. Disposition and Disposition Date (Month, Day, and Year):

(iii) Property Location. Standard Metropolitan Statistical Area, Census

Tract, and Zip Code;

(iv) Area data. Community Reinvestment Act Delineated Community, Low Income Census Tract, Moderate Income Census Tract, and Substantially Minority Census Tract;

(v) Applicant(s) Data. Race, Sex, Marital Status and Age;

(vi) Property data. Property Type, and Year Built;

(vii) Loan terms. Loan Amount, Maturity Term (Months), and Type of Financing.

(3) Additional data for separate registers. In addition to data required by paragraph (b) of this section, the register for each type of loan shall contain the following data:

(i) 1-4 Family Loans:

(A) Property Data. Purchase Price, and Appraised Value;

(B) Loan Terms. Loan to Value Ratio.

(ii) Mobile home loans.

(A) Property Data. Buyer's Total Costs, and Valuation;

(B) Loan Terms. Calculation Method. (iii) Home improvement and equipping loans.

(A) Loan Terms. Calculation Method.

(e) Reporting. Each savings association shall periodically submit aggregate data from loan application registers on forms provided by the Office, and other monitoring data in such manner as the Office may prescribe.

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	PRO		-			++	-		+						PROPERTY TYPE 1 = Single-Family Deelling 2 = 2-4 Family Deelling 3 = Combination Home and Businsss	Insurance
		SHSA													11 Ing	our insu
	NOL	YEAR													ly Dwe Dwellii Home	TYPE OF FINANCING  1 = Conventional without  2 = Conventional with  Private Mortgage  3 = FMA  4 = MA  5 = Other
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ADDRESS OF DECISION CHIEFT		# 3SCANDA				-			-	-		-	EEV, MARCH 1980		JOAN FURNOSE 1 "Purchase (Amer Occupied 2 " Purchase (Investment 3 " Construction / Permanent 4 " Construction 5 " Refisance 9 " Other	DISPOSITION  A Approved with Changes - Applicant Accepts  - Approved with Changes - Applicant Refuses  - Desired - Doctsion Desired on Applicant Refuses  - Desired - Doctsion Desired on Applicant Refuses  - Creditourphises  - Creditourphises  - Creditourphises  - Creditourphises  - Creditourphises  - Creditourphises  - Tallindrawn by Applicant Defore Doctsions  - Withdrawn by Applicant Defore Doctsions
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BILLING CODE 6720-01-C

Appendix A to § 528.6-Instructions Association Instructions For Preparation of Loan Application Registers

Separate Loan Application Registers will be maintained for mortgage loans, home improvement and equipping loans, and mobile home loans. Only applications related to one- to four-family dwellings should be

All home equity loans, secured by one- to four-family dwellings, should be entered on a Loan Application Register. If the primary loan purpose is stated as home improvement, the loan should be entered on the home improvement and equipping loan register. All other home equity loans should be entered on the register for mortgage loans.

Please note that these application registers are for loans originated by the savings association or its decision centers, which may include branches, mortgage companies and service corporations. See Appendix B for instructions on completing Section R, Decision Centers. Loans or participations purchased from unaffiliated entities are never included in the registers.

#### I. Mortgage Loan Application Register

#### A. Loan Identification

1. Loan Purpose. Indicate the purpose of the loan, if known, by use of the numeric codes provided. If the purpose is not known, use Code 9, "Other."

2. Application Number. Indicate the application number in this column. Each application must be assigned a number at the time of receipt. The number should identify the application and facilitate locating it if the requested loan is not made.

3. Date of Application. Indicate the date that the application is received or taken by the association. These dates must appear on the application register in chronological

4. Loan Number. If a loan is made as a result of the application, show the loan's identifying number.

#### B. Loan Disposition

Disposition. Indicate the final disposition of the application using the numeric codes provided.

1. Approved as Requested. Loan application is approved and settled with terms as originally requested.

2. and 3. If the application is approved, but with any of the originally requested terms changed, the indication will be: a "2," if the terms are accepted by the applicant; or "3," if refused by the applicant. Any applications with changed terms must appear as either a

4. Denied-Decision based on Applicant's Creditworthiness.

5. Denied—Decision based on Collateral.6. Denied—Decision based on considerations other than those shown in 4

7. Withdrawn by Applicant. Use this indication only if application is withdrawn before an approval/denial decision is made; or if application is approved with the same terms as requested and is withdrawn by

Date. For applications with a disposition code of "1" or "2," indicate the date the loan is settled (Not the date of approval.) For all other disposition codes, indicate the date of denial, refusal by applicant, or withdrawal by

## C. Property Location

1. SMSA. Indicate, by name, the SMSA in which the property is located. If the property is not in an SMSA, leave blank.

2. Census Tract. Indicate the census tract in which the property is located. If the property is not within a census tract, leave blank

3. Zip Code. Indicate the zip code in which the property is located.

Note: All of the above locators which are obtainable must be shown.

#### D. Area Data

1. CRA Delineated Community (as defined at 12 CFR 563e.3). Show Y-yes if the property is located within the area established as the delineated community(ies) in the association's CRA Statement(s). If the property is not within a delineated community, show N-no.

2. Low Income Census Tract. Show (Y-yes, N-no) to indicate whether or not the property is located within a Low income census tract. If the property is within a census tract, this column must be completed. If the property is not located within a census tract, leave this

3. Moderate Income Census Tract. Show (Y-yes, N-no) to indicate whether or not the property is located within a moderate income census tract. If the property is within a census tract, this column must be completed. If the property is not located within a census tract, leave this column blank.

4. Substantially Minority Census Tract. Show (Y-yes, N-no) to indicate whether or not the property is located within a census tract which is substantially minority in composition. If the property is within a census tract, this column must be completed. If the property is not located in a census tract, leave this column blank. ("Substantially minority" is defined as those census tracts in which the minority resident constitute 25 percent or more of the total population in the census tract.)

The source data needed to enable an association to supply the information required in items 2, 3, and 4 above, will be furnished by the Office. Each association will be furnished a complete list of census tracts by SMSA. This listing will be coded to show each census tract that is: (a) low income, (b) moderate income, or (c) substantially

The savings association may also use data that it has available relative to the demographics required in 2, 3, and 4 above provided the data used conforms with the definitions for "Substantially Minority,"
"Low Income," and "Moderate Income" as used in the Office's data-i.e., "Substantially Minority" means 25 percent or more of the area's population consists of minority residents; "Low Income" means those census tracts in which the median family income is 80 percent or less of the median family income for the entire SMSA; and "Moderate Income" means those census tracts in which the median family income ranges from 81 percent through 95 percent of the median

family income for the entire SMSA. If the association uses its own data it must make the data sources available for examiner inspection.

#### E. Applicant(s) Information

1. Race. Indicate the race of both the applicant and coapplicant using the numeric codes provided.

2. Sex. Indicate "M" for male or "F" for female for both the applicant and coapplicant.

3. Marital Status. Indicate the marital status of both the applicant and coapplicant using the codes provided.

4. Age. Indicate the age of the applicant and coapplicant.

#### F. Property Data

1. Property Type. Indicate the property type using the numeric codes provided.

2. Purchase Price. Indicate the purchase price of the security property if the Loan Purpose code is either "1" or "2." Leave blank for all other loan purpose codes.

3. Appraised Value. Indicate the appraised value of the security property, if an appraisal was made.

4. Year Built. Indicate the year built, or the approximate year built for the security property.

#### G. Loan Terms

For each heading under this section, if the loan was granted (disposition codes I or 2), show the final loan terms. If the loan was not granted (disposition codes 3 through 7), show the loan terms requested.

1. Loan Amount. Indicate the dollar amount of the loan.

2. Loan to Value Ratio. Indicate the ratio of loan amount to appraised value. If an appraisal was not made, show ratio of loan amount to purchase price, if applicable.

3. Interest Rate. Indicate the contract interest rate.

4. Maturity. Indicate the term of the loan in number of months.

5. Type of Financing. Indicate the type of financing using the numeric codes provided.

# II. Mobile Home Loan Application Register

Note: The instructions for the preparation of the Mortgage Loan Application Register shall be used in the preparation of this register for the following major headings:

A. Loan Identification

B. Loan Disposition

C. Property Location

D. Area Data

E. Applicant(s) Information

Instruction for Mobile Home Loan Application Register only:

#### F. Property Data

1. Buyer's Total Cost. Show an amount in this column when the amount loaned was based on the borrower's total cost.

2. Valuation. Show an amount in this column when the amount loaned was based on an appraisal, or other accepted system of valuation of a new or used mobile home.

3. Year Built. Show year in which mobile home unit was manufactured.

G. Loan Terms

Note: For each heading under this section, if the loan was granted (disposition codes 1 or 2), show the final loan terms. If the loan was not granted (disposition codes 3 through 7), show the loan terms requested.

1. Loan Amount. Show the dollar amount of the loan, but exclude interest, however

computed.

2. Loan to BTC Ratio or Loan to Value Ratio. A ratio should be shown in this column only when applicable. If the loan was based on the buyer's total cost or on a valuation, then a ratio should be shown. Leave this column blank for loans that are based on prescribed amounts, such as FHA and VA loans for the purchase of new homes.

3. Interest.

a. Rate. Show contract rate of interest (not APR).

b. Calculation Method. Indicate the method of calculating interest by use of the alphabetic codes provided.

4. Maturity Term. Indicate the term of the loan in months.

5. Type of Financing. Indicate the type of financing using the numeric codes provided.

#### III. Home Improvement and/or Equipping Loan Application Register

Notes: All loan applications that identify home improvement as their primary purpose should be entered on this register.

The instructions for the preparation of the Mortgage Loan Application Register shall be used in the preparation of this register for the following major headings:

A. Loan Identification

B. Loan Disposition (Including, when appropriate, item No. 5-denial based on collateral).

C. Property Location

D. Area Data

E. Applicant(s) Information

F. Property Data (Item No. 2-Purchase Price, and Item No. 3—Appraised Value, may be omitted if they are not contained in the application file.)

Instructions for Home Improvement and/or Equipping Loan Application Register only:

G. Loan Terms

1. Loan Amount. Show the total dollar amount of the loan, but exclude interest, however computed.

2. Interest.

a. Rate. Show contract rate of interest [Not

b. Calculation Method. Indicate the method of calculating interest by use of the alphabetic codes provided. If necessary, use an additional code, "O-Other".

3. Maturity Term. Indicate the term of the loan in months.

4. Type of Financing. Indicate the type of financing using the numeric codes provided.

Appendix B to § 528.6-Instructions-Association Instructions for Preparation of **Data Submission Report** 

Sections O. P. and Q

BILLING CODE 6720-01-M

MORTCACE LOANS   PREPRIED	FEDERAL HOME LOAN BANK BOARD		WAME OF ASSOCIATION AND ADDRE (Please use preprinted label)	ON AND ADDR	ASSOCIATION AND ADDRESS OF DECISION CENTER use preprinted label)	ENTER		DISTRICT	DOCKET	DECISION	SECTION
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152   153   154   155   156   157   158   158   151   152   158   154   155   156   157   158   158   159   158   159   158	t Low or Moderate but Substantially Minority .	141	142	143	144	145	14	9	147	871	651
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191   192   193   194   195   196   197   198   198   199	m-tracted Areas	191	162	163	791	165	16	9	191	168	169
201   202   203   204   205   206   207   208   221   222   223   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   224   225   226   227   228   228   226   227   228   228   228   228   228   228   228   228   228   228   228		191	192	193	194	195	19(	5	197	198	199
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231   232   233   234   235   236   237   238   241   242   242   245   246   247   248   241   242   242   245   245   246   247   248   241   242   242   245   246   247   248   241   242   242   245   245   246   247   248   241   241   242   242   242   242   245   246   247   248   241   242	erican Indian/Alaskan Native	221	222	223	224	225	22	9	227	228	229
241         242         245         246         247         248           291         292         293         294         295         296         297         248           301         302         303         304         305         306         307         308           311         312         313         314         315         316         317         318           391         392         393         394         395         396         397         398           401         402         403         404         415         416         417         418           421         412         414         415         426         427         428           421         422         424         435         426         426         427         428           491         492         494         495         496         497         498           PERIOD COVERED BY THIS REPORT:           FERIOD COVERED BY THIS REPORT:           FORTH DATE HONE LINPROVENENT AND/OR EQUIPPING APPLICATIONS THIS PERIOD COVERED THE NUMBER OF HOME LINPROVENENT AND/OR EQUIPPING APPLICATIONS THIS PERIOD COVER APPLICATIONS THIS PERIOD COVER APPLICATIONS THIS PERIOD COVER APPLICATIONS THIS PERIOD COVER AP	spanic	231	232	233	234	235	23	9	237	238	239
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312   312   313   314   315   316   317   318   318   319   392   394   395   396   397   398   391   392   393   394   395   396   397   398   398   397   398   398   397   398	le (either or both)	301	302	303	304	305	130	9	307	308	309
192   192   194   195   196   197   198   196   197   198   197   198   197   198   197   198   197   198   197   198   197	male (alone or both)	313	312	313	314	315	316	9	317	318	319
401   402   403   404   405   406   407   408   411   412   413   414   415   426   427   428   421   422   423   424   425   426   427   428   421   422   423   424   425   426   427   428   421   422   423   424   425   426   427   428   428   421   422   423   424   425   426   427   428   428   421   422   428   427   428   428   421   422   428		391	392	393	394	395	39	5	397	398	399
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421   422   424   425   426   427   428   491   491   495   495   497   498   491   492   492   492   492   492   492   492   492   493   493   494   495   495   495   495   493   493   494   495	married	411	412	413	414	415	77	9	417	418	617
PERIOD COVERED BY THIS REPORT:  NUMBER OF HOME INPROVENENT AND/OR EQUIPPING APPLICATIONS THIS PERIOD  (1f the number is greater than 50, submit Section P)	oarated	421	422	423	424	425	42	9	427	428	429
PERIOD COVERED BY THIS REPORT:  NUMBER OF HOME IMPROVEMENT AND/OR EQUIPPING APPLICATIONS THIS PERIOD  (If the number is greater than 30, submit Section P)		165	492	493	767	767	67	9	167	867	667
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N.SE Form 1192.

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Low but Not Substantially Minority	121	122		123	124		125	126		127	128	129
Moderate but Not Substantially Minority	131	132	-	133	134		135	136		137	138	139
Not Low or Moderate but Substantially Minority .	141	142		143	144		145	971		147	148	671
All Other Tracts	151	152		153	154		155	156		157	158	159
Non-tracted Areas		162		163	164		165	166		167	168	169
TOTAL	191	192	ACCOUNT OF STREET, STR	193	761		195	196		197	198	199
Asian/Pacific Islander	201	202		203	204	-	205	206		207	208	2001
Black	211	212		213	214		215	216	-	217	218	219
American Indian/Alaskam Native	221	222		223	224		225	226		227	228	229
Hispanic	231	232		233	234		235	236		237	238	239
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TOTAL	291	292	-	293	294		295	296		297	298	299
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Male (either or both)	301	302		303	304		305	306		307	308	309
Female (alone or both)	311	312		313	314		315	316		317	318	319
TOTAL	391	392		393	394		395	396		397	398	399
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FEDERAL HOME LOAN BANK BOARD		NAME OF ASSOCIATION AND ADDRESS OF DECISION CENTER (Please use preprinted label)	ION AND ADDRE	SS OF DECISION	V CENTER		DISTRICT	DOCKET	ER	DECISION	SECTION
DATA SUBMISSION REPORT		はは、大きない						-			0
SECTION Q							10	02 03	0	06 07	01 60
MOBILE HOME LOANS		THE PERSON NAMED IN					PREPARED	BY:			
			-			-	PHONE NO.	(Include	(Include Area Code)	( )	
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	131	132	133	134	135		136	137		138	139
	141	142	143	146	145		146	147		148	671
_	151	152	153	154	155		156	157		158	159
-	161	162	163	791	165		166	167		891	169
TOTAL	161	192	193	194	195		961	107		861	661
B. RACE											
	201	202	203	204	205		206	207	12	208	209
	211	212	213	216	215		216	217	2	218	219
	221	222	223	224	225		226	227	2	228	229
	231	232	233	234	235		236	237	2	238	333
	241	242	243	244	245		246	247	2	248	576
TOTAL	162	292	293	294	295		296	297	2	298	299
C. SEX											
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	311	312	313	314	315		316	317	3	318	310
TOTAL	391	392	393	394	395		396	397	3	398	394
D. MARITAL STATUS											
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MARCH 1980 BILLING CODE 6720-01-C

#### Introduction

The Data Submission Report (DSR) calls for tabulated summary information on applications that have had a disposition during the reporting cycle. Information on pending (i.e. no disposition) applications is collected and reported as a memo item. Information is requested on a semiannual basis for the periods ending in June and December.

All information for this report is obtained from the Loan Application Register. Information on the DSR is broken down by the total number and dollar amount of applications received and acted on, the number and dollar amount of these applications that have been granted, the number and dollar amount denied, and the number and dollar amount withdrawn. ALL DOLLAR AMOUNTS ARE REPORTED IN THOUSANDS (E.G. \$10,100 IS REPORTED AS 10, NOT 10.1).

Under each of these divisions, the applications are further broken down by census tract groupings, race, sex, and marital status. An additional memo reflects the number of those applications still pending. The number of pending applications is NOT included in the total columns.

In technical amendments conforming to the Fair Housing Amendments Act of 1988. Section 528.1(c) has been revised to make it clear that "dwelling-related" includes all loans secured by a one to four family dwelling, regardless of purpose or classification. This is also reflected in Appendix A.

Section 528.1(d) defines a "Decision Center" to mean a savings association's office where decisions are made to approve (on the terms requested, or as changed and accepted) or take any adverse action on applications for dwelling-related loans. Each Decision Center will be responsible for maintaining its own Loan Application Registers and preparation of its own semiannual DSR. All Decision Centers should submit their Data Submission Reports to the savings association's main office. The main office is responsible for submission of all DSRs for all its Decision Centers to the appropriate District Director.

DECISION CENTERS ARE DISCUSSED ON PAGE OPQ-8 OF THESE INSTRUCTIONS.

COMPLETION OF FORM. A separate DSR will be prepared for:

#### OTS FORM

Mortgage loans: 1192-0 Home improvement and/or Equipping loans: 1192-P

Mobile Home Loans: 1192-Q

Home equity loans will be reported as mortgage loans on 1192-0, unless the stated purpose is home improvement and/or equipping, in which case they will be reported on 1192-P.

However, no DSR will be required for mobile home loan applications or home improvement and/or equipping loan applications if the decision center has not received more than 50 of these types of applications during the six (6) month reporting cycle.

The tabulation procedures described below will be used for all three types of Data Submission Reports.

#### I. Applications With A Disposition

Under this section, tabulate only those applications which have an indicator in the "Disposition" column of the application register.

Those with no disposition at the time this report is prepared will be separately tabulated and reported under the Pending column. Please refer to Part II (Applications Without a Disposition) of these instructions.

#### A. Category A-Census T

1. Both Low Income and Substantially Minority. From the application register, total by number and dollar amount all applications with a disposition which have an indicator "Y" (yes) under both the Low Income census tract column and the Substantially Minority census tract column.

Of the above tabulated applications, total all which have a Loan Disposition code of "1" or "2" and place under the "Granted" columns.

Total those above applications with a Loan Disposition code of 3, 4, 5, or 6 and place under the "Rejected/Denied" columns.

Total the above applications with a Loan Disposition code of "7" and place under the "Withdrawn" columns.

The number and dollar amounts under "Granted," "Rejected/Denied," and "Withdrawn" on this line, when added together must total the amounts under the "Total" column.

#### Example

Nos. 103 + 105 + 107 = 101 Nos. 104 + 106 + 108 = 102

The following relationship of equality must be maintained on each line throughout this report:

Granted + Rejected/Denied + Withdrawn = Total

The number of pending applications should NOT be included in the total.

2. Both Moderate Income and Substantially Minority. From the application register, total by number and dollar amount all applications with a disposition which have an indicator "Y" (yes) under both the Moderate Income census tract column and Substantially Minority, by the same procedures described previously.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn," by the same procedures described previously.

3. Low Income but not Substantially
Minority. From the application register, total
by number and dollar amount all applications
with a disposition which have an indicator of
"Y" (yes) under the Low Income census tract
column, and an indicator of "N" (no) under
the Substantially Minority census tract
column.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

4. Moderate Income but not Substantially Minority. From the application register, total by number and dollar amounts all

applications with a disposition which have an indicator of "Y" (yes) under the Moderate Income census tract column, and an indicator of "N" (no) under the Substantially Minority census tract column.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

5. Not Low or Moderate Income but Substantially Minority. From the application register, total by number and dollar amount all applications with a disposition which have an indicator of "Y" (yes) under the Substantially Minority census tract column, and an indicator of "N" (no) under both the Low income census tract column and Moderate Income census tract column.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

6. All Other Tracts. From the application register, total by number and dollar amount the applications which have a disposition, and for which a census tract is shown, but which do not have an indicator of "Y" (yes) in either the Low Income census tract column, the Moderate Income census tract column, or the Substantially Minority census tract column.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

7. Non-tracted Areas. From the application register, total by number and dollar amount all applications which have a disposition, and are located in a non-tracted area.

Break down these applications by the same disposition categories of "Granted," "Rejected/Denied," and "Withdrawn" by the same procedures described previously.

Total all columns under "CATEGORY A— CENSUS TRACTS." As with each individual line above, the totals under "Granted," "Rejected/Denied," and "Withdrawn" for this whole section will equal the accumulated "Total" column.

# B. Category B-Race

Tabulate all applications with a disposition, on the basis of race, using the same breakdown procedures with respect to "Total," "Granted," "Rejected/Denied," and "Withdrawn" under this category as those used for Census Tracts. An additional instruction relative to race breakdowns is necessary, however.

The loan application register requests information relative to both the applicant and coapplicant. For the Data Submission Report, however, only one indicator per application is allowed in order to maintain comparable totals. Therefore:

If both the applicants are white, include the application under the totals for "White."

If one of the applicants is white and the other is one of the minority designations, tabulate the application under that minority designation.

If both applicants are the same minority, tabulate the application under that minority designation.

If both applicants are minorities, but different minorities, tabulate the application under either minority designation but not

As with the Census Tract category, all figures will total horizontally. In addition, the totals of each column under race will equal the totals of each column under Census Tracts, as well as all other categories.

#### Example

No. 191 = No. 291

No. 192 = No. 292

No. 193 = No. 293 etc.

### C. Category C-Sex

Tabulate all applications with a disposition, on the basis of sex, using the same breakdown procedures with respect to "Total," "Granted," "Rejected/Denied," and "Withdrawn" under this category as those described previously. An additional instruction relative to sex designation is necessary, however.

As with the race breakdowns, only one indicator per application is allowed. Therefore:

If either of the applicants or both applicants are male, tabulate the application under the "Male" designation. (This will include coapplicants who are husband and

If there is only one applicant and that person is a female or if both applicants are females, tabulate the application under the "Female" designation.

(Anytime a male is involved as an applicant, tabulate under "Male." Tabulate under "Female" when all applicants are female.)

As with the other categories, all figures will total horizontally. In addition, all totals under Sex category will equal all totals under the other categories.

#### D. Category D-Marital Status

Tabulate all applications with a disposition, on the basis of marital status, using the same breakdown procedures with respect to "Total," "Granted," "Rejected/ Denied," and "Withdrawn" under this category as those described previously. An additional instruction relative to Marital Status is necessary, however.

As with the previous breakdowns, only one indicator per application is allowed. Therefore:

If both applicants are married, not necessarily to each other, tabulate the application under the "Married" designation.

If one applicant is married and the other is either unmarried or separated, tabulate the loan under that appropriate non-married designation.

If both applicants are in different nonmarried statuses, (i.e., one unmarried and one separated), tabulate the application under either designation but not both designations.

As with the other categories, all figures will total horizontally. In addition, all totals under the Marital Status category will equal all totals under the other categories.

#### II. Applications Without a Disposition (Pending)

Under this section, tabulate only those applications which were received during the

six (6) month reporting cycle, and for which there has been no disposition as of the last day of the reporting cycle. DO NOT include pending applications from any previous reporting cycle.

Remember that Pending applications are not included in tabulating the total columns.

#### A. Category A—Census Tracts

1. Both Low Income and Substantially Minority. From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under both the Low Income census tract column and the Substantially Minority census tract column. Place total number under Pending column.

2. Both Moderate Income and Substantially Minority. From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under both the Moderate Income census tract column and the Substantially Minority census tract column. Place total number under Pending column.

3. Low Income but not Substantially Minority. From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under the Low Income census tract column and an indicator of "N" (no) under the Substantially Minority census tract

4. Moderate Income but not Substantially Minority. From the application register, total, by number only, all applications with no disposition which have an indicator of "Y" (yes) under the Moderate Income census tract column and an indicator of "N" (no) under the Substantially Minority census tract column.

5. Substantially Minority, but not Low or Moderate Income. Total, by number only, all applications with no disposition which have a "Y" (yes) under the Substantially Minority census tract column, and an indicator of "N" (no) under both the Low Income and Moderate Income census tract columns.

6. All Other Tracts. Total, by number only, all applications with no disposition which show a census tract but which do not have an indicator of "Y" (yes) in either Low or Moderate census tract column or the Substantially Minority census tract column.

7. Non-tracted Areas. Total, by number only, all applications with no disposition for which a census tract is not shown

TOTAL ALL FIGURES OBTAINED IN THE ABOVE EREAKDOWN.

#### B. Category B-Race

Total, by number only, all applications with no disposition, by various race categories, using the same criteria previously supplied. The total for all applications without a disposition broken down by race will equal the total for all such applications under "Category A-Census Tracts." as well as all the other categories.

## C. Category C-Sex

Total, by number only, all applications with no disposition, by sex, using the same criteria previously supplied. The total for all applications without a disposition under this category will equal the totals under the other categories.

#### D. Category D-Marital Status

Total, by number only, all applications with no disposition, by marital status, using the same criteria previously supplied. The total for all applications without a disposition under this category will equal the totals under all other categories.

THE TOTALS IN EACH CATEGORY WILL BE EQUAL.

#### Example

No. 199 = No. 299 = No. 399 = No. 499 **Decision Centers** 

Section 528.6(d) requires that: . . . each member institution shall maintain, at each of its decision centers (defined in Section 528.1 of this Part), separate, current, readily accessible loan application registers for each of the following loan types made: one- to four-family dwelling loans, mobile home loans, and home improvement and/or equipping loans.

The decision center concept and the semiannual reporting requirement entail certain responsibilities for each decision center and for the main office of the association. These are as follows:

#### 1. Individual Decision Center

A. Maintains its own loan application registers.

B. Prepares its own Data Submission

C. Assures that each Data Submission Report's line items and totals conform with the arithmetic equalities required.

#### Example

Nos. 103+105+107=101 Nos. 104+106+108=102 Nos. 191 = 291 = 391 = 491 Nos. 192=292=392=492

D. A unique and permanent identifying number must be reported to the District Director for each decision center (see the instructions on Section R). Decision centers must show this number on all Data Submission Reports. This number cannot be changed and cannot be re-assigned if the decision center is deleted.

E. Data Submission Reports (and required copies) will be submitted only to the main office of the savings association by each decision center (the main office will submit all DSR's). One copy should be retained at the decision center.

#### 2. Main Office

A. Assures that each Data Submission Report received from a decision center shows the proper decision center number, as recorded by the Office.

B. Assures that Data Submission Reports balance as required. (See 1.c. above.)

C. Makes sure that each decision center has submitted all required semiannual Data Submission Reports.

D. Data Submission Reports should be submitted by the main office as follows:

(1) The original of each report and one copy are to be filed with the District Director.

(2) One additional copy of each report is to be mailed to: Information Resource Management, Office of Thrift Supervision, 1700 G Street, NW., Mail Stop 3-8, Washington, DC 20552.

The copy of the report mailed to Washington, DC is used to enter data into the computerized system. Accordingly, such data entry copy must be completely legible. Where carbon copies of reports are prepared, it is suggested that the first copy of the report be mailed to Washington for data entry.

# § 528.7 Nondiscrimination in employment.

(a) No savings association shall, because of an individual's race, color, religion, sex, or national origin:

(1) Fail or refuse to hire such

individual;

(2) Discharge such individual;

(3) Otherwise discriminate against such individual with respect to such individual's compensation, promotion, or the terms, conditions, or privileges of such individual's employment; or

(4) Discriminate in admission to, or employment in, any program of apprenticeship, training, or retraining, including on-the-job training.

(b) No savings association shall limit, segregate, or classify its employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect such individual's status as an employee because of such individual's race, color, religion, sex, or national

(c) No savings association shall discriminate against any employee or applicant for employment because such employee or applicant has opposed any employment practice made unlawful by Federal, State, or local law or regulation or because he has in good faith made a charge of such practice or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing of such practice by any lawfully constituted authority.

(d) No savings association shall print or publish or cause to be printed or published any notice or advertisement relating to employment by such savings association indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, or national origin.

(e) This regulation shall not apply in any case in which the Federal Equal Employment Opportunities law is made inapplicable by the provisions of section 2000e-1 or sections 2000e-2 (e) through (j) of Title 42, United States Code.

(f) Any violation of the following laws or regulations by a savings association shall be deemed to be a violation of this

part 528:

(1) The Equal Employment
Opportunity Act, as amended, 42 U.S.C.
2000e-2000h-2, and Equal Employment
Opportunity Commission (EEOC)
regulations at 29 CFR part 1600;

(2) The Age Discrimination in Employment Act, 29 U.S.C. 621–633, and EEOC and Department of Labor regulations;

(3) Department of the Treasury regulations at 31 CFR part 12 and Office of Federal Contract Compliance Programs (OFCCP) regulations at 41 CFR part 60;

(4) The Veterans Employment and Readjustment Act of 1972, 38 U.S.C. 2011-2012, and the Vietnam Era Veterans Readjustment Adjustment Assistance Act of 1974, 38 U.S.C. 2021-2026:

(5) The Rehabilitation Act of 1973, 29

U.S.C. 701 et al.; and

(6) The Immigration and Nationality Act, 8 U.S.C. 1324b, and INS regulations at 8 CFR part 274a.

#### § 528.8 Complaints.

Complaints regarding discrimination in lending by a savings association shall be referred to the Assistant Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Washington, DC 20410 for processing under the Fair Housing Act, and to the Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552 for processing under Office regulations. Complaints regarding discrimination in employment by a savings association should be referred to the Equal Employment Opportunity Commission, Washington, DC 20506 and a copy, for information only, sent to the Director, Consumer Affairs, Office of Thrift Supervision, Washington, DC 20552.

## PART 529—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

529.1 529.2 Definitions. Application of this part. 529.3 Discrimination prohibited. 529.4 Assurances required. 529.5 529.6 Compliance information. Conduct of investigations. 529.7 Procedure for effecting compliance. 529.8 529.9 Hearings. 529.10 Decisions and notices.

529.11 Judicial review. 529.12 Effect on other regulations. Appendix A to Part 529—Activities to Which

Authority: Sec. 602, 78 Stat. 252 [42 U.S.C. 2000d-1].

### § 529.1 Purpose.

This Part Applies

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any

program or activity receiving Federal financial assistance from the Office.

## § 529.2 Definitions.

Unless the context requires otherwise, as used in this part—

(a) Applicant means a person who submits an application, request, or plan required to be approved by the Office, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(b) Office means the Office of Thrift Supervision or, except in § 529.10 (e) of this part, any person to whom it has delegated its authority in the matter

concerned.

(c) Facility includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation remodeling, alteration or acquisition of facilities.

(d) Federal financial assistance

includes:

Grants and loans of Federal funds;
 The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;
(4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision

of assistance.

(e) Primary recipient means any recipient that is authorized or required to extend Federal financial assistance to another recipient for the purpose of

carrying out a program. (f) Program includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include

any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or

such non-Federal resources.

(g) Recipient may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

#### § 529.3 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by the Office, including the Federally assisted programs and activities listed in Appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of this part pursuant to an application approved before that effective date, and to any such assistance extended under the Housing Opportunity Allowance Program, pursuant to Part 529 of this subchapter, since the inception of such program. This part does not apply to:

(a) Any Federal financial assistance by way of insurance or guaranty

contracts;

(b) Money paid, property transferred, or other assistance extended under any such program before the effective date

(c) Any assistance to any individual who is the ultimate beneficiary under

any such program; or

(d) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in § 529.4(c) of this part. The fact that a program or activity is not listed in Appendix A to this part shall not mean, if Title VI of the Act is otherwise applicable, that such program is not covered. Other programs under

statutes now in force or hereafter enacted may be added to Appendix A to this part.

#### § 529.4 Discrimination prohibited.

(a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited. (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin-

(i) Deny a person any service, financial aid, or other benefit provided

under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded

others under the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of persons to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such, program, or the class of persons to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with

respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal

financial assistance.

(5) The enumeration of specific forms of prohibited descrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where previous discriminatory practice or usage tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purposes of the Act.

(c) Employment practices. (1) Where a primary objective of a program of Federal financial assistance to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the grounds of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient

shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) Location of facilities. A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this

part.

# § 529.5 Assurances required.

(a) General. Every application for Federal financial assistance to carry out a program to which this part applies and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every program of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during

which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. In the case where the assistance is sought for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith. The Office shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(b) Real property. In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property or interest therein from the Federal Government is involved, but property is acquired or improved under a program of Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Office to revert title to the property in the event of a breach of the covenant where, in the discretion of the Office, such a condition and right of reverter is appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property purposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Office may agree, upon request of the transferee and if

necessary to accomplish such financing, and upon such conditions as it deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

# § 529.6 Compliance information.

(a) Cooperation and assistance. The Office shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall keep such records and submit to the Office timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Office may determine to be necessary to enable it to ascertain whether the recipient has complied or is complying with this part. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.

(c) Access to sources of information. Each recipient shall permit access by the Office during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Office finds necessary to apprise such persons of the protections against discrimination

# § 529.7 Conduct of investigations.

(a) Periodic compliance reviews. The Office shall from time to time review the practices of recipients to determine whether they are complying with this part.

assured them by the Act and this part.

(b) Complaints. Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Office a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing

is extended by the Office.

(c) Investigations. The Office will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this

(d) Resolution of matters. (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Office will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 529.8 of

this part.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section, the Office will so inform the recipient and the complainant, if any, in writing.

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

#### § 529.8 Procedure for effecting compliance.

(a) General. If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to,

(1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking.

(2) A proceeding brought under the Office's cease-and-desist authority pursuant to Part 550 of this chapter, and

(3) Any applicable proceeding under

State or local law.

(b) Noncompliance with § 529.5. If an applicant fails or refuses to furnish an assurance required under § 529.5 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Office shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, the Office shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending. terminating, or refusing to grant or continue Federal financial assistance shall become effective until-

(1) The Office has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Office pursuant to § 529.10(e); and

(4) The expiration of 30 days after the Office has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof,

in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance with Title VI of the Act by any other means authorized by law shall be taken by this Office until-

(1) The Office has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

#### § 529.9 Hearings.

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by § 529.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action,

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Office that the matter be

scheduled for hearing; or

(2) Advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing.

An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and § 529.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) Time and place of hearing. Hearings shall be held at the offices of the Office in Washington, DC, at a time fixed by the Office unless it determines that the convenience of the applicant or recipient or of the Office requires that

another place be selected. Hearings shall be held before the Office, or at its discretion, before a hearing examiner appointed in accordance with section 3105 of Title 5, United States Code, or detailed under section 3344 of Title 5. United States Code.

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the Office shall have the right to be represented by counsel.

(d) Procedures, evidence, and record. (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of Title 5, United States Code, and in accordance with part 509 of the General Regulations of the Office (12 CFR part 509), to the extent said part 509 is consistent with this part 529, and with such other regulations that may be necessary or appropriate for the conduct of hearings pursuant to this part 529.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by crossexamination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) Consolidated or joint hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more programs to which this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Office may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with § 529.10.

# § 529.10 Decisions and notices.

(a) Procedure on decisions by hearing examiner. If the hearing is held by a

hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Office for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Office his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Office may, on its own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that it will review the decision. Upon the filing of such exceptions or of notice of review, the Office shall review the initial decision and issue its own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Office.

(b) Decisions on record or review by the Office. Whenever a record is certified to the Office for decision or it reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Office conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with its briefs or other written statements of its contentions and a written copy of the final decision of the Board shall be sent to the applicant or recipient and to the complainant, if any.

(c) Decisions on record where a hearing is waived. Whenever a hearing is waived pursuant to § 529.9, a decision shall be made by the Board on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) Rulings required. Each decision of a hearing examiner or the Office shall set forth his or its ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) Approval by Office. Any final decision by an official of the Office. other than the Office itself, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Office itself, which may approve such

decision, may vacate it, or remit or mitigate any sanction imposed.

(f) Content of orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such programs to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Office that it will fully comply with this part.

(g) Post termination proceedings. (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Office to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Office determines that those requirements have been satisfied, it shall restore such eligibility.

(3) If the Office denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the Office to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Office. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph (g)(3) are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

#### § 529.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

#### § 529.12 Effect on other regulations.

- (a) Nothing in this part supersedes any of the following (including future amendments thereof):
- (1) Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or
- (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the grounds of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.
- (b) Forms and instructions. The Office shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which it is responsible.
- (c) Supervision and coordination. The Office may from time to time assign to officials of the Office or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this part (other than responsibility for final decision as provided in § 529.10), including the achievement of effective coordination and maximum uniformity within the Office and within the Executive Branch of the Government in the application of Title VI and this part to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph (c) shall have the same effect as though such action had been taken by this Office.

# Appendix A to Part 529—Activities to Which This Part Applies

1. Use by a savings association of funds the interest charges on which have been adjusted pursuant to the Housing Opportunity Allowance Program (Pub. L. 91–351, July 24, 1970, 101).

## PART 533—ELECTRONIC FUND TRANSFERS

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 902–920, as added by sec. 2001, 92 Stat. 3728–3741, as amended (15 U.S.C. 1693–1693r).

# § 533.1 Electronic fund transfers subject to Regulation E.

Any electronic fund transfer, as that term is defined by section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) and § 205.2 of Regulation E of the Federal Reserve Board (12 CFR 205.2), provided by any savings association is subject to the provisions of the Electronic Fund Transfer Act and Regulation E.

# PART 535—PROHIBITED CONSUMER CREDIT PRACTICES

Sec.

535.1 Definitions.

535.2 Unfair credit practices.

535.3 Unfair or deceptive cosigner practices.

535.4 Late charges.

535.5 State exemptions.

Authority: Sec. 18, as added by sec. 202, 88 Stat. 2193, as amended (15 U.S.C. 57a).

#### § 535.1 Definitions.

(a) Act. For the purposes of this part, "Act" means the Federal Trade Commission Act. 15 U.S.C. 41 et seg.

Commission Act, 15 U.S.C. 41 et seq.
(b) Consumer. The term "consumer" means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, and who applies for or is extended "consumer credit" as defined in § 561.12

of this chapter.

- (c) Cosigner. The term "cosigner" means a natural person who assumes liability for the obligation of a consumer without receiving goods, services, or money in return for the obligation, or in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the account. The term shall include any person whose signature is requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term shall not include a spouse or other person whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.
- (d) Creditor. The term "creditor" means a savings association.
- (e) Debt. The term "debt" means money that is due or alleged to be due from one to another.
- (f) Earnings. The term "earnings" means compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to

a pension, retirement, or disability program.

- (g) Household goods. The term "household goods" means clothing, furniture, appliances, linens, china, crockery, kitchenware, and personal effects of the consumer and his or her dependents, provided that the following are not included within the scope of the term "household goods":
  - (1) Works of art;
- (2) Electronic entertainment equipment (except one television and one radio);
- (3) Antiques, i.e., any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character, and

(4) Jewelry (other than wedding rings).

- (h) Savings association. For purposes of this part, the term "savings association" includes any savings association, and any service corporation that is wholly owned by one or more savings association, that engages in the business of providing credit to consumers.
- (i) Obligation. The term "obligation" means an agreement between a consumer and a creditor.
- (j) Person. The term "person" means an individual, corporation, or other business organization.

# § 535.2 Unfair credit practices.

- (a) In connection with the extension of credit to consumers after January 1, 1986, it is an unfair act or practice within the meaning of Section 5 of the Act for a savings association directly or indirectly to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation purchased by a savings association, any of the following provisions:
- (1) A cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon;
- (2) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation;
- (3) An assignment of wages or other earnings, unless:
- (i) The assignment by its terms is revocable at the will of the debtor,

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned

at the time of the assignment.

(4) A nonpossessory security interest in household goods other than a purchase-money security interest.

### § 535.3 Unfair or deceptive cosigner practices.

(a) General. In connection with the extension of credit to consumers after

January 1, 1986, it is:

(1) A deceptive act or practice within the meaning of Section 5 of the Act for a savings association, directly or indirectly, to misrepresent the nature or extent of cosigner liability to any

(2) An unfair act or practice within the meaning of Section 5 of the Act for a savings association, directly or indirectly, to obligate a cosigner unless the cosigner is informed, prior to becoming obligated, of the nature of his

or her liability as cosigner.

(b) Disclosure requirement. (1) A clear and conspicuous document that shall contain the following statement or one which is substantially equivalent, shall be given to the consigner prior to becoming obligated (which, in the case of open-end credit, shall mean prior to the time that the cosigner becomes obligated for any fees or transaction on the account):

#### Notice of Cosigner

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection

costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

(2) Compliance with the disclosure requirement under paragraph (b)(1) of this section shall constitute compliance with the consumer information requirement of paragraph (a)(2) of this section.

(3) If the notice is a separate document, nothing other than the following times may appear with the

notice:

(i) The name and address of the savings association;

(ii) An identification of the debt to be cosigned (e.g., a loan identification number);

(iii) The date; and

(iv) The statement, "This notice is not the contract that makes you liable for the debt."

#### § 535.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer after January 1, 1986, it is an unfair act or practice within the meaning of Section 5 of the Act for a savings association, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For the purposes of this part, "collecting a debt" means any activity, other than the use of judicial process, that is intended to bring about or does bring about repayment of all or part of a

consumer debt.

# § 535.5 State exemptions.

(a) Upon application to the Office by an appropriate state agency, the Office shall determine if:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule.

(b) If the Office makes a determination as specified under paragraph (a) of this section, then that provision of this section will not be in effect in that state to the extent specified by the Office in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively, as determined by the Office.

(c) The Director of Consumer Affairs in consultation with the Chief Counsel shall have delegated authority to make such determinations as are required under this part 535.

## SUBCHAPTER C-REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

# PART 541-DEFINITIONS

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541.28 Withdrawal value of a savings

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

# § 541.1 General.

Unless another definition is provided in this subchapter, definitions in Part 561 of this chapter apply.

#### 8 541.2 Act.

The term "Act" means the Home Owners' Loan Act of 1933, as amended.

# § 541.3 Combination of home and business property.

The term "combination of home and business property" means a home used in part for business.

#### § 541.4 Combination of residential real estate and business property involving only minor or incidental business use.

The term "combination of residential real estate and business property involving only minor or incidental business use" means residential real estate for which no more than twenty percent of the total appraised value of the real estate is attributable to the business use.

# § 541.5 Commercial paper.

The term "commercial paper" means any note, draft, or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months. exclusive of days of grace, or any

renewal thereof the maturity of which is likewise limited.

# § 541.6 Cooperative housing development.

The term "cooperative housing development" means real estate primarily comprising a group of single-family dwellings owned by a non-profit cooperative housing organization.

#### § 541.7 Corporate debt security.

The term "corporate debt security" means a marketable obligation, evidencing the indebtedness of any corporation in the form of a bond, note and/or debenture which is commonly regarded as a debt security and is not predominantly speculative in nature. A security is marketable if it may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.

#### § 541.8 Debit card.

The term "debit card" means a card that enables an accountholder to obtain access to a savings account for the purpose of making withdrawals or of transferring funds to a third party by non-transferable order or authorization.

#### § 541.9 District Director.

The term "District Director" means the senior representative of the Director of the Office of Thrift Supervision for all matters dealing with the examination and supervision of a savings association in the region where the savings association is located.

# § 541.10 Dwelling unit.

The term "dwelling unit" means the unified combination of rooms designed for residential use by one family, other than a single-family dwelling.

# § 541.11 Federal savings association.

The term "Federal savings association" means a Federal savings association or Federal savings bank chartered under section 5(o) of the Act.

#### § 541.12 General reserves.

The term "general reserves" means aggregate reserves established solely to meet losses.

## § 541.13 Guaranteed loan.

The term "guaranteed loan" means a loan guaranteed or as to which a commitment to guarantee has been made under the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38, United States Code, as amended.

#### § 541.14 Home.

The term "home" means real estate comprising a single-family dwelling(s) or

a dwelling unit(s) for four or fewer families in the aggregate.

# § 541.15 Improved nonresidential real estata.

The term "improved nonresidential real estate" means nonresidential real estate:

(a) Containing a permanent structure(s) constituting at least 25 percent of its value; or

 (b) Containing improvements which make it usable by a business or industrial enterprise; or

(c) Used, or to be used within a reasonable time, for commercial farming, excluding hobby and vacation property.

## § 541.16 Improved residential real estate.

The term "improved residential real estate" means residential real estate containing offsite or other improvements sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

#### § 541.17 Insured loan.

The term "insured loan" means a loan as to which the mortgagee is insured, or as to which a commitment for such insurance has been made under the National Housing Act or the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38, United States Code, as amended.

# § 541.18 Interim Federal savings association.

The term "interim Federal savings association" means a Federal savings association chartered by the Office under section 5 of the Act to facilitate the acquisition of 100 percent of the voting shares of an existing Federal stock savings association or other insured stock savings association by a newly formed company or an existing savings and loan holding company or to facilitate any other transaction the Office may approve.

# § 541.19 Interim state savings association.

The term "interim state savings association" means a savings association, other than a Federal savings association, the accounts of which are insured by the FDIC to facilitate the acquisition of 100 percent of the voting shares of an existing Federal stock savings association or other insured stock savings association by a newly formed company or an existing savings and loan holding company or to facilitate any other transaction the Office may approve.

#### § 541.20 Loans.

The term "loans" means obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

#### § 541.21 Nonresidential real estate.

The terms "nonresidential real estate" or "nonresidential real property" mean real estate that is not "residential real estate," as that term is defined in \$ 541.23 of this part.

#### § 541.22 [Reserved]

#### § 541.23 Residential real estate.

The terms "residential real estate" or "residential real property" mean homes (including condominiums and cooperatives), combinations of homes and business property, other real estate used for primarily residential purposes other than a home (but which may include homes), combinations of such real estate and business property involving only minor business use, farm residences and combinations of farm residences and commercial farm real estate, property to be improved by the construction of such structures, or leasehold interests in the above real estate.

# § 541.24 Short-term savings account.

The term "short-term savings account" means a savings account which will be withdrawn in less than twenty-four months or was established to accumulate funds to pay taxes or insurance premiums on real estate securing a loan.

#### § 541.25 Single-family dwelling.

A structure designed for residential use by one family, or a unit so designed, whose owner owns, directly or through a non-profit cooperative housing organization, an undivided interest in the underling real estate, including property owned in common with others which contributes to the use and enjoyment of the structure or unit.

#### § 541.26 Surplus.

The term "surplus" means undistributed earnings held as unallocated reserves for general corporate use.

# § 541.27 Unimproved real estate.

The term "unimproved real estate" means real estate that will be improved, as defined in §§ 541.15 or 541.16 of this part.

# § 541.28 Withdrawal value of a savings account.

The term "withdrawal value of a savings account" means the amount

invested in a savings account plus earnings credited thereto, less lawful deductions therefrom.

## PART 543-INCORPORATION. ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

543.1 Corporate title.

# Organization

543.2 Application for permission to organize.

543.5 Issuance of charter.

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543.8 Conversion from State mutual charter to Federal charter.

543.9 Application for conversion to Federal mutual charter.

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543.14 Continuity of existence.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended [12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 et seq.).

# § 543.1 Corporate title.

(a) General. Except for corporate titles in existence or applied for as of May 4, 1984, a Federal savings association's title shall include the word "Savings" end in some manner indicate that it is a Federal association. A Federal savings association shall not adopt a title that misrepresents the nature of the institution or the services it offers.

(b) Title change. Prior to changing its corporate title, an association must file with the District Director a written notice indicating the intended change. The District Director, or his or her designee, shall provide to the association a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the District Director, or his or her designee does not notify the association of his or her objection on the grounds set forth in paragraph (a) of this section, the association may change its title by amending its charter in accordance with § 544.2(b) or § 552.4 and the amendment provisions of its charter, except that an association chartered as a Federal Savings and Loan Association may change its title to indicate that it is a Federal Savings Bank, and an association chartered as a Federal Savings Bank may change its title to indicate that it is a Federal Savings and Loan Association, only pursuant to a charter change under § 544.3 or § 552.4 of this chapter.

#### Organization

§ 543.2 Application for permission to organize.

(a) General. Questions regarding this section shall be directed to the District Director or his or her designee. Recommendations by District Directors or their designees and officers and employees of the Office regarding applications for permission to organize a Federal savings association are privileged, confidential, and subject to

§ 505.4 of this chapter.

(b) Form; supporting information. Persons applying for permission to organize a Federal savings association shall obtain application and notice forms and related instructions from the District Director, or his or her designee. An application and all required supporting information shall be executed by at least seven persons (the "applicants") and submitted to the District Director, or his or her designee. The applicants shall request a corporate title to be approved by the Office and to be included as Section One of the association's charter. The applicants shall provide a copy of the proposed charter and bylaws including any preapproved charter provisions specifically requested. An application shall be deemed filed when three copies are delivered to the District Director, or his or her designee; the District Director, or his or her designee, shall notify the applicant in writing that the application is complete and direct the applicant to publish notice pursuant to paragraph (d) of this section when the District Director, or his or her designee, determines that all required information has been submitted.

(c) Amendment of application; additional information. An applicant may amend an application or file additional supporting information only until publication of notice under paragraph (d) of this section, unless otherwise requested to do so by the

(d) Public notice and inspection. (1) The applicant shall publish notice within 10 days after being notified by the District Director, or his or her designee, that the application is complete. Notice shall be published in a newspaper printed in the English language and having a general

circulation in the community in which the home office of the new association is to be located. If the District Director, or his or her designee, determines that the primary language of a significant number of adult residents of the community is a language other than English, the District Director, or his or her designee, may require that notice also be given simultaneously in the appropriate language(s).

(2) Promptly after publication, the applicant(s) shall transmit to the District Director, or his or her designee, two copies of each notice and publisher's

affidavit of publication.

(3) The District Director, or his or her designee, shall give notice of the application to the State official who supervises savings associations in the State in which the new association is to be located, and to persons whose requests for announcements under § 563e.6 of this chapter have been received in time for such notification; these notices shall be in addition to legal notification as set forth in paragraph (d) of this section. The District Director, or his or her designee, may also give notice to any other persons she/he believes might have an interest in the application.

(4) The application and its filing shall be confidential until publication of notice. Thereafter, the application and all related communications may be inspected by any person at the District Director's office during regular working hours, unless application information is exempted from public disclosure under

§ 505.4 of this chapter.

(e) Protest. Communications and answers to protests shall be submitted only as provided in this paragraph (e) or

as requested by the Office.

(1) Within 10 days of the date of publication of notice of application (or 17 days after such date if an extension is requested in writing within the 10-day period), anyone may file a communication in favor or protest of the application by furnishing four copies to the District Director, or his or her designee. If the applicant or any person who has filed a substantial protest pursuant to this paragraph (e) wishes to have oral argument heard on the merits of an application, a request for oral argument must be made within this

(2) Within 10 days after the filing of a protest, the District Director shall advise the protestant and the applicant, in writing, whether the protest is considered "substantial." A protest will be considered substantial only in those instances where the reason for the protest is consistent with one of the

regulatory bases set forth in the regulations for denying the application (excluding supervisory considerations).

(3) The applicant may file an answer to any protest until 10 days after the last date for filing of communications by furnishing four copies to the District Director or his or her designee.

(4) A protest shall be considered "substantial" only if it is written, seasonably filed, and contains at least

the following:

(i) A summary of the reasons for the protest;

(ii) The specific matters in the application to which the protestant objects, and the reasons for each

objection:

(iii) Facts supporting the protest, including relevant economic or financial data; and

(iv) Any adverse effects on the protestant which may result from approval of the application.

(5) The District Director's determination whether a protest is "substantial" is final. A protest filed by an individual or community group pertaining to an applicant's performance under Part 563e of this chapter (the Community Reinvestment Act regulations) shall not be considered insubstantial merely because of the form in which it is submitted.

(f) Oral argument—(1) General. Oral argument on the merits of an application

shall be heard if

(i) The applicant or anyone who has filed a substantial protest has seasonably requested it pursuant to paragraph (e) of this section; or

(ii) The District Director, or his or her designee, after reviewing the application and other pertinent information, considers oral argument desirable. The District Director, or his or her designee, shall mail notice of the time (which shall be not less than 10 days after such mailing) and place of oral argument to the applicant and to all persons who filed communications. In the case of protests pertaining to Part 563e of this chapter, the District Director, or his or her designee, shall ensure that the time and place of any oral argument is reasonably convenient to the protestants.

(2) Procedure. The District Director, his or her designee, or any other person designated by the Director, may hear and determine all matters relating to the conduct of oral argument. Arguments may be made in person or by authorized representatives and unless otherwise permitted by the District Director, or his or her designee, shall be based only on written information previously filed regarding the application. A reasonable time of at least one hour shall be

allowed to each side for oral argument. A transcript of the oral argument shall be made and included in the application file.

(g) Approval. Decisions on all applications for permission to organize a Federal association will be made by the Director, or his or her designee.

(1) Factors that will be considered are:
(i) Whether the applicants are persons
of good character and responsibility;

(ii) Whether a necessity exists for such association in the community to be served;

(iii) Whether there is a reasonable probability of the association's usefulness and success;

(iv) Whether the association can be established without undue injury to properly conducted existing local thrift and home financing institutions; and

(v) Whether the association will perform a role of providing credit for housing consistent with safe and sound operation of a federal savings association.

(2) Once an application has been approved, the Office shall promptly send a copy of that application, together with the certificate of approval specified at Section 5(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1815(a)(2)), to the Federal Deposit Insurance Corporation.

(3) Approvals of applications will be

conditioned on the following:

(i) Receipt by the Office of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the Federal savings association will be insured by the Federal Deposit Insurance Corporation;

 (ii) A minimum amount of capital to be paid into the association's accounts prior to commencing business;

(iii) The submission of a statement

(A) the applicants have complied in all respects with the Act and these rules and regulations regarding organization of a Federal savings association;

(B) the applicants have incurred no expense in forming the association which is chargeable to it, and no such expense will be incurred;

(C) no funds have been collected on account of the association before the Office's approval;

 (D) an organization committee has been created (naming the committee and its officers);

(E) the committee will organize the association and serve as temporary officers of the association until officers are elected by the association's board of directors under § 543.6 of this part; and

(F) no funds will be accepted for deposit by the association until organization has been completed; and (iv) The satisfaction of any other requirement the Director, or his or her designee, may impose.

(h) Alternative procedures for interim Federal savings associations.

(1) The procedures prescribed by paragraphs (d) through (g) of this section shall not be required with respect to applications for permission to organize an interim Federal savings association that will not open for business except as may be required by Parts 546, 563, or 574 of this chapter.

(2) Approval of an application for permission to organize an interim Federal savings association shall be conditioned on approval by the Office of an application to merge the interim Federal savings association and an existing insured stock association or on approval by the Office of such other transaction which the interim was chartered to facilitate. In evaluating the application, the Director or his or her designee will consider the purpose for which the association will be organized, the form of any proposed transactions involving the organizing association, the effect of the transactions on existing associations involved in the transactions, and the factors specified in section 543.2(g)(1) to the extent relevant.

(3) Delegations of authority. (i) The Director delegates the authority to approve applications for permission to organize an interim Federal savings association under paragraph (h) of this section to the District Director, provided that the District Director otherwise is authorized to approve the transaction for which the interim Federal savings association has been chartered to facilitate.

(ii) The Director delegates the authority to approve applications for permission to organize an interim Federal savings association under paragraph (g) of this section to the Senior Deputy Director for Supervision (Operations) or his or her designee with the concurrence of the Chief Counsel or his or her designee, Provided, That the Senior Deputy Director for Supervision (Operations), or the Chief Counsel, jointly or individually, otherwise are authorized to approve the transaction that the interim Federal savings association has been chartered to facilitate.

#### § 543.5 Issuance of charter.

Approval by the Office of the organization of a Federal savings association or the conversion of an insured association to Federal savings association form shall constitute issuance of a charter and shall be final, provided that the association complies

with the procedures set out at § 544.2(a) of this subchapter. The charter shall conform with the requirements of § 544.1 of this subchapter, the permissible provisions of § 544.2, or other provisions specifically approved by the Office.

## § 543.6 Completion of organization.

(a)(1) Temporary officers. When the Office approves an application for permission to organize a Federal savings association, the applicants shall constitute the organization committee and elect a chairperson, vicechairperson, and a secretary, who shall act as the temporary officers of the association until their successors are duly elected and qualified. The temporary officers may effect compliance with any conditions prescribed by the Office.

(2) Organization meeting. Promptly upon receipt of a charter, the temporary officers shall call a meeting of the association's capital subscribers; notice of such meeting shall be mailed to each subscriber at least 5 days before the meeting day. Subscribers who have subscribed for a majority of the association's capital, present in person or by proxy, shall constitute a quorum. At such meeting, directors of the association shall be elected according to the association's charter and bylaws, and any other action permitted by such charter and bylaws may be taken; any such action shall be considered an acceptance by the association of such charter and of such bylaws, which shall be in the form provided in Parts 544 and 552 of this subchapter.

(b) First meeting of directors. Upon election, the association's board of directors shall hold a meeting to elect officers of the association as provided by its charter and bylaws and to take any other action necessary to permit operation of the association in accordance with law, the association's charter and bylaws, and these rules and regulations. When such officers have been bonded under § 563.190 of this chapter, they shall immediately collect the sums due on subscriptions to the association's capital.

(c) Membership in Federal Home Loan Bank and insurance of accounts. When a Federal savings association's charter is issued it must promptly qualify as a member of a Federal Home Loan Bank and meet all requirements necessary to obtain insurance of its accounts by the Federal Deposit Insurance Corporation.

(d) Failure to complete. Organization of a Federal savings association is completed when the organization meeting and the first meeting of its directors have been held, permanent

officers have been bonded, the association holds the cash required to be paid on subscriptions to its capital, if required, Federal Home Loan Bank membership has been obtained and Federal Deposit Insurance Corporation insurance of accounts has been confirmed and any conditions imposed by the Office in connection with approval of the application have been met. If organization is not so completed within six months after issuance of a charter, or within such additional period as the Director or his or her designee may for good cause grant, and in the case of an interim Federal savings association, if a merger, or other transaction facilitated by the existence of an interim association, has not been approved, the charter shall become void and all cash collected on subscriptions shall thereupon be returned.

#### § 543.7 Limitations on transaction of business.

No person may organize a Federal savings association, collect money from others for such purpose, or represent himself or herself as authorized to do so, and no Federal savings association shall transact any business prior to completion of its organization, except as provided in this part.

#### § 543.7-1 Federal savings association created in connection with an association in default or in danger of default.

The preceding sections of this part do not apply to a Federal savings association which is proposed by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation under section 11(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)) or section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441A), or is otherwise chartered by the Office in connection with an association in default or in danger of default. Incorporation and organization of such associations are complete when the Director or his or her designee so determines.

### Conversion

### § 543.8 Conversion of State mutual charter to Federal charter.

(a) With the approval of the District Director or his or her designee, any state savings and loan type or state savings bank type institution may, on such conditions as the Office may prescribe, convert itself into a Federal savings association, if it complies with all laws of its jurisdiction expressly providing for such conversions and with these rules and regulations.

(b) Questions regarding conversions shall be directed to the District Director.

Recommendations by District Directors and officers and employees of the Office regarding applications for issuance of Federal charters are privileged, confidential and subject to § 505.4 of this chapter.

#### § 543.9 Application for conversion to Federal mutual charter.

(a) Filing. Any state savings and loan association type or state savings bank type institution desiring to convert itself into a Federal savings association shall, after approval by its board of directors, file an application in duplicate with the District Director on forms obtained from the District Director. The applicant shall submit any financial statements or other information the Office may require, and pay all costs, as determined by the Office, of consideration of the application.

(b) Plan of conversion. The applicant shall submit with its application a plan of conversion specifying the location of the home office and any branch offices to be maintained by the Federal savings association, and providing for:

(1) Appropriate reserves and surplus for the Federal savings association;

(2) Satisfaction in full or assumption by the Federal savings association of all creditor obligations of the applicant;

(3) Issuance by the Federal savings association of savings accounts to current holders of withdrawable accounts in an amount equalling the value of such accounts; and

(4) If applicable, issuance of additional savings accounts to current holders of nonwithdrawable capital stock of the applicant in an amount equalling the value of their nonwithdrawable capital stock, including the present value of any preference to which such holders are entitled.

(c) Action on application. The District Director will consider such application and any information submitted therewith, and may approve the application in accordance with § 543.2(g)(1). The District Director will not consider the application of a converting institution not insured by the Federal Deposit Insurance Corporation, until an eligibility examination has been completed by the Federal Deposit Insurance Corporation. Approval of an application and issuance by the Office of a charter will be subject to:

(1) Compliance by the applicant with all conditions prescribed in the approval;

(2) Receipt by the applicant of approval of the plan of conversion by such vote as may be required by the

laws of the applicant's jurisdiction to consider such action;

(3) In the case of a converting association the accounts of which are not insured by the Federal Deposit Insurance Corporation, receipt by the District Director of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the converting association will be insured by the Federal Deposit Insurance Corporation; and

(4) Receipt by the District Director of written confirmation from the appropriate Federal Home Loan Bank of approval of the converting institution's application for Federal Home Loan Bank membership, if the institution is not a member.

### § 543.10 Organization after conversion.

Except as provided in § 543.11, after a Federal charter is issued under § 543.9 the association's members shall, after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take all other action necessary fully to effect the conversion and operate the association in accordance with law and these rules and regulations. Immediately thereafter the board of directors shall meet, elect officers, and transact any other appropriate business.

# § 543.11 Organization plan for governance during first years after issuance of Federal mutual savings bank charter.

(a) Organizational meeting. Except as provided in paragraph (c)(1) of this section, promptly upon receipt of a charter, the officers of a Federal mutual savings bank which, immediately prior to conversion, was a state chartered mutual savings bank, shall call a meeting of the members. Notice for, and conduct of, such meeting shall be in accordance with the bank's Federal charter and bylaws. Business to be conducted at the organizational meeting shall include the election of trustees (who may also be known as a board of directors) and any other matters permitted by the charter and bylaws. Any action taken at such meeting shall be deemed an acceptance of the charter and bylaws approved by the Office pursuant to § 544.1 of this subchapter.

(b) First meeting of trustees. Upon election or appointment, the board of trustees shall hold a meeting to elect the officers of the bank in accordance with its Federal charter and bylaws, and to take other action necessary to permit the operation of the bank in accordance with the Home Owners' Loan Act of 1933, as amended, the bank's charter and bylaws, these rules and regulations, and orders of the Office,

(c) Plan for governance of association during first six years after issuance of Federal charter. (1)(i) An applicant for a Federal mutual savings bank charter may submit a plan which provides that each member of its governing board, i.e., board of trustees, managers, or directors, may continue to serve, provided that within two years of the issuance of a Federal charter at least one-fifth of the members of such board shall have been elected by vote, either in person or by proxy, of the bank's membership as provided in its Federal charter, that within three years of the issuance of its Federal charter at least two-fifths of the members of such board shall have been elected by such a membership vote, that within four years of the issuance of its Federal charter at least three-fifths of the members of such board shall have been elected by such a membership vote, that within five years of the issuance of its Federal charter at least four-fifths of the members of such board shall have been elected by such a membership vote, and that within six years of the issuance of its Federal charter all of the members of such board shall have been elected by such a membership vote.

(ii) The plan:

(A) Shall set forth the names of those persons who are being proposed for service on the applicant's governing board after conversion to a Federal charter,

(B) Shall show how trustees not elected by the converted bank's membership will be appointed or otherwise selected, and

(C) Shall provide that no trustees may be appointed or elected to terms of more than three years.

(iii) The plan may provide that
(A) after receipt of its Federal charter

the bank will be organized by its existing governing board,

(B) within the first two years following receipt of its Federal charter, the bank's charter may be amended without a membership vote, provided any such amendment is first approved by a two-thirds vote of its board of trustees and is thereafter approved by the Office, and

(C) the bank's first annua1
membership meeting need not take
place until two years after receipt of its
Federal charter. Also, during the first
two years of any such plan, the Office
will not require the bank to comply with
the disclosure requirements of § 563.45
of this Chapter if such disclosure
requirements would be otherwise
applicable.

(2) Except to the extent that the Office approves a plan under this paragraph (c) which is inconsistent with other

provisions of this section, a Federal mutual savings bank shall in all respects comply with those other provisions.

#### § 543.11-1 Grandfathered authority.

(a) A Federal savings bank formerly chartered or designated as a mutual savings bank under state law may exercise any authority it was authorized to exercise as a mutual savings bank under state law at the time of its conversion from a state mutual savings bank to a Federal or other state charter. Except to the extent such authority may be exercised by Federal savings associations not enjoying grandfathered rights hereunder, such authority may be exercised only to the degree authorized under state law at the time of such conversion. Unless otherwise determined by the Director, an association, in the exercise of grandfathered authority, may continue to follow applicable state laws and regulations in effect at the time of such conversion.

(b) A Federal savings association that acquires, or has acquired, a Federal savings bank by merger or consolidation may itself exercise any grandfathered rights enjoyed by the disappearing institution, whether such rights were obtained directly through conversion or through merger or consolidation. The extent of the grandfathered rights of a Federal savings association that disappeared prior to the effective date of this section shall be determined exclusively pursuant to this section.

(c) This section shall not be construed to prevent the exercise by a Federal savings association enjoying grandfathered rights hereunder of authority that is available under the applicable state law only upon the occurrence of specific preconditions, such as the attainment of a particular future date or specified level of regulatory capital, which have not occurred at the time of conversion from a state mutual savings bank, provided they occur thereafter.

(d) This section shall not be construed to permit the exercise of any particular authority on a more liberal basis than is allowable under the most liberal construction of either state or Federal law or regulation.

## § 543.12 Bank Insurance Fund-Insured Federal savings banks.

The Office may issue a Federal charter to a state-chartered savings bank which is, and continues to be, insured by the Bank Insurance Fund.

## § 543.13 Notice to FDIC.

Upon receiving an application for a Federal charter by an association insured by the Bank Insurance Fund, the Office shall notify the Federal Deposit Insurance Corporation, and shall notify it of the Office's determination with respect to such application.

#### § 543.14 Continuity of existence.

The corporate existence of an association converting under this part or under § 544.3 of this subchapter shall continue in its successor. Each savings or demand accountholder shall receive a savings account or accounts in the converted association equal in amount to the value of accounts held in the former association.

## PART 544—CHARTER AND BYLAWS

#### Charter

Sec.

544.1 Federal mutual charter.

544.2 Charter amendments.

544.3 Adoption of new Federal charter by a Federal savings association.

## 544.4 Issuance of charter.

#### Bylaws

544.5 Federal mutual savings association bylaws.

544.6 Effect of subsequent charter or bylaw change.

#### Availability

544.7 In association offices.

544.8 References to old and new charters; rules applicable to trustees of Federal mutual savings banks.

544.9 Obsolete charter provision for Charter B associations.

#### Appendix to Part 544—Model Bylaws for Mutual Savings Associations

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 et seq.).

### Charter

## § 544.1 Federal mutual charter.

When the Office approves an Application for Permission to Organize for a Federal mutual savings association that is a Federal savings and loan association or savings bank, or approves an Application for Conversion to a Federal savings and loan association or savings bank pursuant to §§ 543.8 and 543.9 of this subchapter or § 544.3 of this part, the association shall have a charter in the following form, or a form which includes any of the additional provisions set forth in § 544.2 of this part, if such provisions are specifically requested. A charter for a Federal mutual savings

bank shall substitute the term "savings bank" for "association."

#### Federal Mutual Charter

Section 1. Corporate title. The full corporate title of the Federal savings association hereby chartered is

Section 2. Office. The home office shall be

Section 3. Duration. The duration of the association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal mutual savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision ("Office").

Section 5. Capital. The association may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the Office.

Section 6. Members. All holders of the association's savings, demand, or other authorized accounts are members of the association. In the consideration of all questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each \$100, or fraction thereof, of the withdrawal value of the member's account. [Associations adopting this charter with existing borrower members must grandfather those borrower members who were members as of the date of issuance of the new charter by the Office. Borrowers as of the date of this charter shall continue to have one vote for the period of time such borrowings are in existence.] No member, however, shall cast more than 1000 votes. Voting may be by proxy, which is subject to the rules and regulations of the Office. Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question. All accounts shall be nonassessable.

Section 7. Directors [Trustees]. The association shall be under the direction of a board of directors [trustees]. The authorized number of directors [trustees] shall not be fewer than five nor more than fifteen persons, as fixed in the association's bylaws, except that the number of directors [trustees] may be increased to a number greater than fifteen with the prior approval of the Director of the Office or his or her delegate. Each director [trustee] of the association shall be a member of the association. Members of the association shall elect directors [trustees] by ballot: Provided, that in the event of a vacancy on the board, the board of directors [trustees] may fill such vacancy, if the members of the association fail to do so, by electing a director [trustee] to serve until the next annual meeting of the members. Directors [trustees] shall be elected for

periods of three years and until their successors are elected and qualified, but provision shall be made for the election of approximately one-third of the board each year.

[State-chartered savings banks converting to Federal savings banks may include alternative provisions for the election and term of office of trustees [directors] so long as such provisions (i) are authorized by the Office, and (ii) provide for compliance with the standard provisions of this section no later than six years after the conversion to a Federal savings association.]

Section 8. Capital, surplus, and distribution of earnings. The association shall maintain for the purpose of meeting losses the amount of capital required by section 5 of the Home Owners' Loan Act and by regulations of the Office. The association shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Director of the Office: Provided, That the association may establish minimum-balance requirements for accounts to be eligible for distribution of earnings.

All holders of accounts of the association shall be entitled to equal distribution of assets, pro rata to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

Section 9. Amendment of charter. Adoption of any preapproved charter amendment pursuant to §§ 544.2 or 544.3 of the Office's regulations shall be effective upon filing the amendment with the Office in accordance with regulatory procedures, after such preapproved amendment has been submitted to and approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be submitted to and preliminarily approved by the Office prior to submission to and approval by the members at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon and approved shall be effective upon filing with the Office in accordance with regulatory procedures. Attest:

Secretary of the Association

By: —
President or Chief Executive Officer of the

Association Attest:

Secretary of the Office of Thrift Supervision
Director of the Office of Thrift Supervision
Rec.

#### § 544.2 Charter amendments.

(a) Whenever a Federal mutual savings association, whose charter specifies that amendments shall be

effective upon filing, completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit one signed and three conformed copies of such amendment, along with a certification by the secretary of the association that the amendment is validly authorized and approved, to the District Director, or his or her designee, who shall return to the association a copy of the charter amendment stamped to demonstrate its filing. Such filing shall constitute filing with the Office for purposes of determining the effectiveness of the amendment. An association whose charter requires final approval by the Office of all charter amendments shall be deemed to have obtained such final approval by filing a copy of the properly adopted amendment with the District Director, or his or her designee, in the manner specified in the first sentence of this paragraph (a).

(b) This section constitutes preliminary approval by the Office of any of the following amendments to the charter of a Federal mutual savings association, including the adoption of the Federal mutual charter as set forth in § 544.1 of this part: Provided, That the association follows the requirements of its charter in adopting the amendments.

(1) Purpose and powers. Add a second paragraph to Section 4, as follows:

Section 4. Purpose and powers. \* \* \* The association shall have the express power: (i) To act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as the Secretary may prescribe, to perform all such reasonable duties as fiscal agent of the United States as may be required, and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (ii) To sue and be sued. complain and defend in any court of law or equity; (iii) To have a corporate seal, affixed by imprint, facsimile or otherwise; (iv) To appoint officers and agents as its business shall require and allow them suitable compensation; (v) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and under this Charter; (vi) To raise capital, which shall be unlimited, by accepting payments on savings, demand, or other accounts, as are authorized by rules and regulations made by the Office, and the holders of all such accounts or other accounts as shall, to such extent as may be provided by such rules and regulations, be members of the association and shall have such voting rights and such other rights as are thereby provided; (vii) To issue notes, bonds, debentures, or other obligations, or securities, provided by or under any provision of Federal statute as from time to time is in effect; (viii) To provide for redemption of insured accounts; (ix) To borrow money

without limitation and pledge and otherwise encumber any of its assets to secure its debts; (x) To lend and otherwise invest its funds as authorized by statute and the rules and regulations of the Office; (xi) To wind up and dissolve, merge, consolidate, convert, or reorganize; (xii) To purchase, hold, and convey real estate and personalty consistent with its objects, purposes, and powers; (xiii) To mortgage or lease any real estate and personalty and take such property by gift, devise, or bequest; and (xiv) To exercise all powers conferred by law. In addition to the foregoing powers expressly enumerated, this association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers.

(2) Title change. A Federal mutual savings association that has complied with § 543.1(b) of this subchapter may amend its charter by substituting a new corporate title in Section 1.

(3) Home office. A Federal mutual savings association that has complied with § 545.95 of this subchapter may amend its charter by substituting a new home office in Section 2.

(4) Mutual capital certificates. Renumber existing Section 9 as Section 10, add new Section 9 to read as set forth below, and add an additional provision to renumbered Section 10 as provided below:

Section 9. Mutual capital certificates. The association may issue mutual capital certificates pursuant to the rules and regulations of the Office. Subject to such rules and regulations and without the prior approval of the members, the board of directors [trustees] of the association is authorized, by resolution(s) from time to time adopted by it, to provide in supplementary sections hereto for the issuance of mutual capital certificates and to fix and state the voting powers, designations, preferences, and the relative participating, optional, or other special rights of the certificates and the qualifications, limitations, and restrictions thereon.

Members of the association shall not be entitled to preemptive rights with respect to the issuance of mutual capital certificates nor shall holders of such certificates be entitled to preemptive rights with respect to any additional issues of mutual capital certificates.

Section 10. Amendment of charter. \* \* \* Additional provisions may be added to the section to grant holders of mutual capital certificates the right to vote on amendments, additions, alterations, changes, or repeal of this charter in any of the instances set forth in § 563.74 of the Office's regulations.

(c) Reissuance of charter. A federal mutual savings association that has amended its charter may apply to have its charter, including the amendments, reissued by the Office by filing one executed, and three conformed copies, with the signatures required under § 544.1 of this part, with the Secretariat of the Office, and such supporting documents as may be needed to demonstrate that the amendments were properly adopted. The Director delegates to the Counsel authority to

sign on his or her behalf charters submitted for reissuance pursuant to this paragraph (c).

(d) Delegations of authority—(1)
Actions by the District Director. The
District Director is authorized to grant or
deny preliminary approval, in whole or
in part, of any application for a charter
amendment filed under this section:
Provided, that the following conditions
are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) Appeal. Denial of an application by a District Director pursuant to paragraph (d)(1) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review with the Chief Counsel, addressed to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, with a copy of such request to the District Director. The appeal request should include the application for charter amendment as originally filed with the District Director or his or her designee, a copy of the District Director's letter denying preliminary approval of the application, and should indicate the specific reasons why the District Director's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the District Director's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Chief Counsel, the Chief Counsel shall have 60 calendar days to determine whether to approve or deny the appeal. If the Chief Counsel does not approve or deny the appeal request within the 60-day period, the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly

(3) Actions by the Chief Counsel. The Chief Counsel, or his or her designee, is authorized to take the following actions:

 (i) Grant or deny, in whole or in part, preliminary approval of any application for a charter amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (d)(2) of this section.

and Regulations Applicable to Federal

fixes the name of the association as

name of the undersigned as \_

and its home office location as

home office at \_

following resolution:

association as .

office location as

form of the charter of a

The undersigned, under § 544.3 of the Rules

[specify type of institution], fixing the

. The present charter

and fixing its home

[specify type

Savings Associations, petitions the Director

of the Office of Thrift Supervision to issue to

The undersigned, by its secretary, hereby

certifies that the members or stockholders, at

Be it resolved. That the present charter of

a meeting duly called and held, adopted the

this association be amended to read in the

Regulations applicable to Federal savings

associations, prescribing the name of the

of institution] as prescribed in the Rules and

In witness whereof, the Secretary of the

it a charter in the form of the charter of a

(e) Filing requirements. Application for preliminary approval of any amendment to the charter of a federal mutual savings association (other than amendments for which preliminary approval is granted pursuant to paragraph (b) of this section) that is eligible to be processed under delegated authority pursuant to paragraph (d) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the District Director, or his or her designee. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent

management, or
(2) Involve a significant issue of law

or policy.
If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (d) of this section, then the original and one copy of the proposed amendment should be filed with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, with a copy to the District Director.

## § 544.3 Adoption of new Federal charter by a Federal savings association.

If the board of directors of a Federal mutual savings association proposes to amend its charter to read in the form of any other Federal mutual savings association charter, the amendment may be approved by a majority vote of members present at any duly called regular or special meeting of members. In the case of a Federal stock association, the board of directors of which proposes to amend its charter to read in the form of any other Federal stock association charter, the amendment may be approved by the stockholders by a majority of the total votes eligible to be cast at a legal meeting. In either case, after such vote, the association shall submit the following petition to the District Director, together with any requested change in the association's title or location of home office, and the Office thereafter will issue a charter in the form sought, upon approval by the District Director or the Director of a change in such name or location: District Director

undersigned has hereunto affixed his or her hand and the seal of the undersigned this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

[Name of Federal savings association]

By:

§ 544.4 Issuance of charter.

Issuance by the Office of a charter to

Issuance by the Office of a charter to a Federal mutual savings association within the meaning of § 543.5 of this subchapter constitutes the incorporation of that association by the Office.

#### Bylaws

## § 544.5 Federal mutual savings association bylaws.

(a) A Federal mutual savings association shall operate under bylaws that contain provisions which comply with all requirements specified by the Office in this section and which are not otherwise inconsistent with the provisions of this section, the association's charter, and all other applicable laws, rules, and regulations. Bylaw provisions which adopt the language of the model bylaws set out as an appendix to this part shall be deemed to comply with the requirements of this section. A copy of all bylaws and amendments thereto shall be filed with the District Director, or his or her designee, in accordance with the procedure for filing amendments to charters set out at § 544.2 of this part and shall include an opinion by the association's counsel that said bylaws or amendments thereto comply with all applicable laws, rules, and regulations.

(b) The following requirements are applicable to Federal mutual savings associations:

(1) Annual meetings of members. An association shall provide for and conduct an annual meeting of its members for the election of directors [trustees] and at which any other business of the association may be

conducted. Such meeting shall be held, as designated by its board of directors [trustees], at a location within the state that constitutes the principal place of business of the association and at a date and time within 120 days after the end of the association's fiscal year. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding year.

(2) Special meetings of members.

Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The subject matter of such special meeting must be established in the notice for such meeting. The board of directors [trustees] of the association or the holders of 10 percent or more of the voting capital shall be entitled to call a

special meeting.

(3) Notice of meeting of members. Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record at the last address appearing on the books of the association. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice.

(4) Fixing of record date. For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the bylaws shall provide for the fixing of a record date and a method for determining from the books of the association the members entitled to vote. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of

members, is to be taken.

(5) Voting by proxy. Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and regulations of the Office, including the placing of such proxies on file with the secretary of the association, for verification, prior to the convening of such meeting. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors [trustees] as a whole, or to a committee appointed by a majority of such board.

(6) Communications between members. Provisions relating to communications between members shall be consistent with § 545.131 of the

Office's regulations.

(7) Number of directors [trustees]. The number of directors [trustees] shall not be fewer than five nor more than fifteen, except where authorized by the Director of the Office or his or her designee.

(8) Meetings of the board. The board of directors [trustees] shall determine the place, frequency, time, procedure for notice, which shall be at least 24 hours unless waived by the directors [trustees], and waiver of notice for all regular and special meetings. The meetings shall be under the direction of a chairman, appointed annually by the board; or in the absence of the chairman, the meetings shall be under the direction of the president. The board also may permit telephonic participation at meetings. The bylaws may provide for action to be taken without a meeting if unanimous written consent is obtained for such action. A majority of the authorized directors [trustees] shall constitute a quorum for the transaction of business. The act of a majority of the directors [trustees] present at any meeting at which there is a quorum shall be the act of the board.

(9) Officers, employees. and agents. (i) The bylaws shall contain provisions regarding the officers of the association, their functions, duties, and powers. The officers of the association shall consist of a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected annually by the board of directors [trustees]. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors [trustees] or chosen in such other manner as may be prescribed in the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(ii) All officers and agents of the association, as between themselves and the association, shall have such authority and perform such duties in the management of the association as may be provided in the bylaws, or as may be determined by resolution of the board of directors [trustees] not inconsistent with the bylaws. In the absence of any such

provision, officers shall have such powers and duties as generally pertain to their respective offices.

(iii) Any indemnification provision must provide that any indemnification is subject to applicable Federal law, rules,

and regulations.

(10) Resignation or removal of directors [trustees]. The bylaws shall set out the procedure for the resignation of a director [trustee], which shall be by written notice or by any other procedure established in the bylaws. Directors [trustees] may only be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors [trustees].

(11) Powers of the board. The board of directors [trustees] shall have the

power

(i) By resolution, to appoint from among its members and remove an executive committee and one or more other committees, which committee[s] shall have and may exercise all the powers of the board between the meetings or the board; but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law;

(ii) To fix the compensation of directors [trustees], officers, and employees; and to remove any officer or employee at any time with or without

cause;

(iii) To exercise any and all of the powers of the association not expressly reserved by the charter to the members.

(12) Execution of instruments, generally. The board shall establish procedures for the execution, verification, acknowledgment, and delivery of instruments or writings of

any nature.

(13) Nominations for directors [trustees]. The bylaws shall provide that nominations for directors may be made at the annual meeting by any member and shall be voted upon, except, however, the bylaws may require that nominations by a member must be submitted to the secretary and then prominently posted in the principal place of business, at least 10 days prior to the date of the annual meeting. However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which must submit nominations to the secretary and have such nominations similarly posted

at least 15 days prior to the date of the annual meeting.

(14) New business. The bylaws shall provide procedures for the introduction of new business at the annual meeting. Those provisions may require that such new business be stated in writing and filed with the secretary prior to the annual meeting at least 30 days prior to the date of the annual meeting.

(15) Seal. The association may have a corporate seal, which may be altered at pleasure, and use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner

reproduced.

(16) Amendment. Bylaws may include any provision for their amendment pursuant to § 544.5 of the Office's regulations, as long as any such amendment would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose. Amendments shall be effective upon filing with the Office in accordance with regulatory procedures after approval by a two-thirds affirmative vote of the authorized board, or by a vote of the members of the association.

(17) Miscellaneous. The bylaws may also address the subjects of age limitations for directors or officers as long as consistent with applicable federal law, rules, or regulations, emergency preparedness, and any other subjects necessary or appropriate for effective operation of the association.

(c) Delegations of authority— (1)
Actions by the District Director. The
District Director is authorized to grant or
deny preliminary approval, in whole or
in part, of any application for a bylaw
amendment filed under this section:
Provided, that the following conditions
are met:

are met

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) Appeal. Denial of an application by a District Director pursuant to paragraph (c)(l) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review with the Chief Counsel, addressed to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy of such request to the

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District Director. The appeal request should include the application for bylaw amendment as originally filed with the District Director, a copy of the District Director's letter denying preliminary approval of the application, and should indicate the specific reasons why the District Director's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the District Director's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Chief Counsel, the Chief Counsel shall have 60 day calendar days to determine whether to approve or deny the appeal. If the Chief Counsel does not approve or deny the appeal request within the 60-day period, the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) Actions by the Chief Counsel. The Chief Counsel, or his or her designee, is authorized to take the following actions:

- (i) Grant or deny, in whole or in part, preliminary approval of any application for a bylaw amendment filed under this section; and
- (ii) Approve or deny a request for appeal filed pursuant to paragraph (c)(2) of this section.
- (d) Filing requirements. Application for preliminary approval of any amendment to the bylaws of a federal mutual savings association that is eligible to be processed under delegated authority pursuant to paragraph (c) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the District Director. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:
- (1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or
- (2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (c) of this section, then the original and one copy of the proposed amendment should be filed with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy to the District Director.

§ 544.6 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal mutual savings association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

#### Availability

#### § 544.7 In association offices.

A Federal mutual savings association shall make available to its members at all times in its offices a true copy of its charter and bylaws, including any amendments, and shall deliver such a copy to any member on request.

#### § 544.8 References to old and new charters; rules applicable to trustees of Federal mutual savings banks.

The trustees of each Federal mutual savines bank shall be subject to the Rules and Regulations Applicable to **Federal Savings Associations (Part 54)** et seq. of this subchapter), and the Rules and Regulations Applicable to All Savings Associations (Part 561 et seq. of this chapter), insofar as they pertain to directors of Federal savings associations, just as if they were directors.

#### § 544.9 Obsolete charter provision for Charter B associations.

The standard provision in section 10 of Charter B relating to limiting equity, corporate bond and consumer loan investments to a particular percentage of assets is of no force and effect.

#### Appendix to Part 544-Model Bylaws for **Mutual Savings Associations**

1. Annual meeting of members. The annual meeting of the members of the association for the election of directors [trustees] and for the transaction of any other business of the association shall be held, as designated by the board of directors [trustees], at a location within the state that constitutes the principal place of business of the association at (insert date and time within 120 days after the end of the association's fiscal year), if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday. The annual meeting may be held at such other times on such day or at such other place in the same state as the board of directors [trustees] may determine. At each annual meeting, the officers shall make a full report of the financial condition of the association and of its progress for the preceding year and shall outline a program for the succeeding

2. Special meetings of members. Special meetings of the members of the association may be called at any time by the president or the board of directors [trustees] and shall be called by the president, a vice president, or the secretary upon the written request of members of record, holding in the aggregate

at least one-tenth of the capital of the association. Such written request shall state the purpose of the meeting and shall be delivered at the principal place of business of the association addressed to the president. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order.

3. Notice of meeting of members. (a) Notice of each annual meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week! immediately prior to the week in which such annual meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least (insert number no less than 15) days and not more than (insert number not more than 45) days prior to the date on which such annual meeting shall convene, to each of its members of record at the last address appearing on the books of the association. Such notice shall state the name of the association, the place of the annual meeting. the date and time when it shall convene, and the matters to be considered. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such annual meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any annual meeting of members, notice thereof need not be given to such member.

(b) Notice of each special meeting shall be either published once a week for the two consecutive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such special meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the association is located, or mailed postage prepaid at least (insert number not less than 15) days and not more than (insert number not more than 45) days prior to the date on which such special meeting shall convene to each of its members of record at the member's last address appearing on the books of the association. Such notice shall state the name of the association, the purpose(s) for which the meeting is called, the place of the special meeting and the date and time when it shall convene. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 14 days immediately preceding the date on which such special meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any special meeting of members, notice thereof need not be given to such member.

4. Fixing of record date. For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the board of directors [trustees] shall fix in advance a record date for any such determination of members. Such date shall be not more than 60 days nor fewer that 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The member entitled to participate in any such action shall be the member of record on the books of the association on such record date. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the association as of such record date. Any member of such record date who ceases to be a member prior to such meeting shall not be entitled to vote at that meeting.

5. Voting by proxy. Voting at any annual or special meeting of the members may be by proxy pursuant to the rules and regulations of the Office, provided, that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the association, for verification, neter to the convening of such meeting. Allproxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors [trustees] as a whole, or to a committee appointed by a majority of such board.

8. Communication between members. Communication between members shall be subject to any applicable rules or regulations of the Office.

7. Number of directors [trustees]. The number of directors [trustees] of the association shall be

8. Meetings of the board. The board of directors [trustees] shall meet regularly without notice at the principal place of business of the association at least once each month at an hour and date fixed by resolution of the board, provided that the place of meeting may be changed by the directors [trustees]. Special meetings of the board may be held at any place specified in a notice of such meeting and shall be called by the secretary upon the written request of the chairman or of three directors [trustees]. All special meetings shall be held upon at least three days' written notice to each director [trustee] unless notice is waived in writing before or after such meeting. Such notice shall state the place, date, time, and purposes of such meeting. A majority of the authorized directors [trustees] shall constitute a quorum for the transaction of business. The act of a majority of the directors [trustees] present at any meeting at which there is a quorum shall be the act of the board. Action may be taken without a meeting if unanimous written consent is obtained for such action. The meetings shall be under the direction of a chairman, appointed annually by the board, or in the absence of the chairman, the meetings shall be under the direction of the president.

9. Officers, employees, and agents.
Annually at the meeting of the board of directors [trustees] of the association next following the annual meeting of the members of the association, the board shall elect a president, one or more vice presidents, a secretary, and a treasurer: Provided, that the offices of president and secretary may not be held by the same person and a vice president may also be the treasurer. The board may appoint such additional officers, employees, and agents as it may from time to time determine. The term of office of all officers

shall be one year or until their respective successors are elected and qualified; but any officer may be removed at any time by the board.In the absence of designation from time to time of powers and duties by the board, the officers shall have such powers and duties as generally pertain to their respective offices.

Any indemnification by the association of the association's personnel is subject to any applicable rules or regulations of the Office.

10. Resignation or removal of directors [trustees]. Any director [trustee] may resign at any time by sending a written notice of such resignation to the office of the association delivered to the secretary. Unless otherwise specified therein such resignation shall take effect upon receipt by the secretary. More than three consecutive absences from regular meetings of the board, unless excused by resolution of the board, shall automatically constitute a resignation, effective when such resignation is accepted by the board.

At a meeting of members called expressly for that purpose, directors [trustees] or the entire board may be removed, only with cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors [trustees].

11. Powers of the board. The board of directors [trustees] shall have the power:

(a) By resolution, to appoint from among its members and remove an executive committee, which committee shall have and may exercise the powers of the board between the meetings of the board, but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the association. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law;

(b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the

duties thereof;

(c) To fix the compensation of directors [trustees], officers, and employees; and to remove any officer or employee at any time with or without cause;

(d) To extend leniency and indulgence to borrowing members who are in distress and generally to compromise and settle any debts and claims;

(e) To limit payments on capital which may be accepted;

(f) To reject any application for an account or membership; and

(g) To exercise any and all of the powers of the association not expressly reserved by the

charter to the members.

12. Execution of instruments, generally. All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the association or any one of them and in such manner as from time to time may be determined by resolution of the board. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the association whatsoever

shall be signed by such officer or officers or such agent or agents of the association and in such manner as the board may from time to time determine. Endorsements for deposit to the credit of the association in any of its duly authorized depositaries shall be made in such manner as the board may from time to time determine. Proxies to vote with respect to shares or accounts of other associations or stock of other corporations owned by, or standing in the name of, the association may be executed and delivered from time to time on behalf of the association by the president or a vice president and the secretary or an assistant secretary of the association or by any other persons so authorized by the board.

13. Nominating committee. The chairman, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three persons who are members of the association. Such committee shall make nominations for directors [trustees] in writing and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 15-day period prior to the date of the annual meeting. Provided such committee is appointed and makes such nominations, no nominations for directors [trustees] except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the association at least 10 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 10-day period prior to the date of the annual meeting. Ballots bearing the names of all persons nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the chairman shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual meeting, nominations for directors [trustees] may be made at the annual meeting by any member and shall be voted upon.

14. New business. Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors [trustees] of the association, shall be stated in writing and filed with the secretary of the association at least 30 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered; but unless stated in writing and filed with the secretary 30 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or regular meeting of the members taking place at least 30 days thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in

connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein

15. Seal. The seal shall be two concentric circles between which shall be the name of the association. The year of incorporation, the word "Incorporated," or an emblem may

appear in the center.

16. Amendment. Adoption of any bylaw amendment pursuant to § 544.5 of the Office's regulations, as long as consistent with applicable law, rules and regulations, and which adequately addresses the subject and purpose of the stated bylaw section, shall be effective upon filing with the Office in accordance with the regulatory procedures after such amendment has been approved by a two-thirds affirmative vote of the authorized board, or by a vote of the members of the association.

17. Age limitations.—(a) Directors [trustees]. No person (fill in any age, 70 or above] years of age shall be eligible for election, reelection, appointment, or responsiment to the board of the association. No director [trustee] shall serve as such beyond the annual meeting of the association immediately following the director [trustee] becoming (fill in age used above), except that a director [trustee] serving on (fill in bylaw adoption date) may complete the term as director [trustee]. This age limitation does not apply to an advisory

director [trustee]. (b) Officers. No person (fill in any age, 70 or above) years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the association. No officer shall serve beyond the annual meeting of the association immediately following the officer becoming (fill in age used above), except that an officer serving on (fill in bylaw adoption date) may complete the term. However, an officer shall, at the option of the board, retire at age \_ the officer has served in an executive or high policy-making post for at least two years immediately prior to retirement and is immediately entitled to nonforfeitable annual retirement benefits of at least \_\_\_\_(must be in

accordence with ERISA).

18. Preparedness emergency bylaws.—(a) Emergency operations by surviving staff. In the event of an emergency declared by the President of the United States or the person performing his or her functions, the officers and employees of this association will continue to conduct the affairs of the association under such guidance from the directors as may be available except as to matters which by statute require specific approval of the board of directors and subject to conformance with any governmental directives during the emergency.

(b) Emergency operations by directors or members of executive committee. The board of directors shall have the power, in the absence or disability of any officer, or upon the refusal of any officer to act, to delegate and prescribe such officer's powers and duties to any other officer, or to any director, for the time being. In the event of a state of disaster of sufficient severity to prevent the conduct and management of the affairs and business of this association by its directors

and officers as contemplated by these bylaws, any two or more available members of the then incumbent executive committee shall constitute a quorum of that committee for the full conduct and management of the affairs and business of the association in accordance with the provisions of Article of these bylaws. In the event of the unavailability, at such time, of a minimum of two members of the then incumbent executive committee, any three available directors shall constitute the executive committee for the full conduct and management of the affairs and business of the association in accordance with the foregoing provisions of this section. This bylaw shall be subject to implementation by resolutions of the board of directors passed from time to time for that purpose, and any provisions of these bylaws (other than this section) and any resolutions which are contrary to the provisions of this section or to the provisions of any such implementary resolutions shall be suspended until it shall be determined by any interim executive committee acting under this section that it shall be to the advantage of this association to resume the conduct and management of its affairs and business under all of the other provisions of these bylaws.

(c) Officer succession. If consequent upon war or warlike damage or disaster, the president of this association cannot be located by the then acting home office or is unable to assume or to continue normal executive duties, then the authority and duties of the president shall, without further action of the board of directors, be automatically assumed by one of the following persons in the order designated: (List of names in order of succession is shown in the official minutes of the association and in the certified copies which are under seal in various depositories.)

Any one of the above persons who in accordance with this resolution assumes the authority and duties of the president shall continue to serve until he or she resigns or until five-sixths of the other officers who are attached to the then acting home effice decide in writing he or she is unable to perform said duties or until the elected president of this association, or a person higher on the above list, shall become available to perform the duties of president of the association. If consequent upon war or warlike damage or disaster, the treasurer of this association cannot be located by the then acting home office or is unable to assume or to continue normal executive duties, then the authority and duties of the treasurer shall, without further action by the board of directors, be automatically assumed by one of the following persons in the order designated: (List of names in order of succession is shown in the official minutes of the association and in the certified copies which are under seel in various depositories.)

The person assuming the authority and duties of treasurer in accordance with this section shall serve until: (1) The elected treasurer or person whose name is higher on the above list shall be able to function as treasurer, or (2) until he or she resigns or is unable as determined by the acting president to perform the duties of his or her office. In

the case of paragraph (c)(2) of this section, the next eligible and available person on the above list shall assume the authority and duties of the treasurer. Anyone dealing with this association may accept a certification by any three officers that a specified individual is acting as president or that a specified individual is acting as treasurer in accordance with this section; and that anyone accepting such certification may continue to consider it in force until notified in writing of a change, said notice of change to carry the signatures of three officers of the association.

(d) Providing for alternate locations. The

offices of the association at which its business shall be conducted shall be the home office thereof located at \_ (and branches, if any), and any other legally authorized location which may be leased or acquired by this association to carry on its business. During an emergency resulting in any authorized place of business of this association being unable to function, the business ordinarily conducted at such location shall be relocated elsewhere in suitable quarters, in addition to or in lieu of the locations heretofore mentioned, as may be designated by the board of directors or by the executive committee or by such persons as are then, in accordance with resolutions adopted from time to time by the board of directors dealing with the exercise of authority in the time of such emergency. conducting the affairs of this association. Any temporarily relocated place of business of this association shall be returned to its legally authorized locations as soon as practicable and such temporary place of business shall then be discontinued.

(e) Providing for acting home offices. In case of, and provided that, because of war or warlike damage or disaster, the Home Office of this association is unable temporarily to continue its functions.

Branch, located in shall automatically and without further action of this board of directors, become the "Acting Home Office of this Association"; that if by reason of said war or warlike damage or disaster, both the Home Office of this association and the said

Branch of this association are unable to carry on their functions, then and in such case, the

Branch of this association, located in

\_\_\_\_\_, shall, without further action of this board of directors, become the "Acting Home Office of this Association"; and if neither \_\_\_\_\_\_ Branch nor \_\_\_\_\_\_ Branch can carry on their functions, then the Branch of this association, located in \_\_\_\_\_\_, shall, without further action of this board of directors, become the "Acting Home Office of this Association." The Home Office shall resume its functions at its legally authorized location as soon as practicable.

#### PART 545-OPERATIONS

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Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464) sec. 18, 64 Stat. 891, as amended by sec. 221, 103 Stat. 287 (12 U.S.C. 1828).

#### § 545.1 General authority.

A Federal savings association may exercise all authority granted it by the Home Owners' Loan Act of 1933 ("Act"), 12 U.S.C. 1464, as amended, and its charter and bylaws, whether or not implemented specifically by Office regulations, subject to the limitations and interpretations contained in this part.

#### § 545.2 Federal preemption.

The regulations in this Part 545 are promulgated pursuant to the plenary and exclusive authority of the Office to regulate all aspects of the operations of Federal savings associations, as set forth in section 5(a) of the Act. This exercise of the Office's authority is preemptive of any state law purporting to address the subject of the operations of a Federal savings association.

#### §§ 545.3-545.9 [Reserved]

#### § 545.10 Savings deposits or shares.

Savings deposits or shares of any Federal savings association which are in compliance with the provisions of subsection (b) of section 5 of Title III of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 which amended the Home Owners' Loan Act of 1933, the Federal savings association's charter, and the rules and regulations for the Office, all as now or hereafter in effect, relating to the type, form, return, and maturity thereof are, as

to type and form, return, and maturity hereby approved by the Office.

#### § 545.11 Issuance of accounts.

(a) Prior to doing business and issuing accounts as defined in § 561.2 of this chapter, a Federal savings association shall obtain and maintain insurance of all its accounts by the Federal Deposit Insurance Corporation.

(b) General. Pursuant to section 5(b)(1) of the Act, a Federal savings association may issue accounts as defined in § 561.2 of this chapter. A Federal savings association may establish classes of accounts and specify terms and conditions for such classes of accounts. Amounts deposited in accounts may be in cash or property in which the association is authorized to invest. The authority of a Federal savings association to issue accounts pursuant to this part is subject to any applicable provision of Part 563 of this

(c) Status and priority of savings deposits and accounts. In the event of voluntary or involuntary liquidation, dissolution, or winding up of the association, or in the event of any other situation in which the priority of savings deposits and accounts is in controversy, such savings deposits and accounts shall, to the extent of their withdrawable value, be debts of the Federal savings association having the same priority as debts of general creditors who have no priority, other than from consensual subordination, over other general creditors. Savings deposits of Federal mutual savings associations shall have the same right to share in the remaining assets of the Federal savings association that savings share accounts would have.

#### § 545.12 Demand deposit accounts.

(a) Pursuant to 12 U.S.C. 1464(b)(1) (A), (B), a Federal savings association may accept demand deposit accounts from any person.

(b) A Federal savings association shall not pay interest on a demand deposit; however, premiums and finders' fees offered in accordance with § 561.47 (b) through (f) of this chapter are not payments of interest, and the absorption of expenses or forbearance from charging a fee as set forth in paragraph (g) of § 561.47 is not a payment of interest.

(c) For purposes of this section. demand deposits include only those accounts which are payable on demand within the meaning of § 563.6 of this chapter.

## § 545.13 Account records.

(a) Evidence of ownership and account. A Federal savings association shall comply with the requirements found at §§ 563.1 and 563.170(c)(8) of the chapter. Accounts must be evidenced by a written agreement with transactions confirmed by issuance of a receipt or advice.

(b) Ownership of record—(1) General rule. A Federal savings association may treat the holder of record of an account as the owner, regardless of any notice to the contrary, until the account is transferred on the Federal savings association's books. Accounts shall be transferable only on the association's books on proper application by the transferee and acceptance of the transferee as accountholder on terms approved by the board of directors.

(2) Exception. Paragraph (b)(1) of this section notwithstanding, a Federal savings association may issue negotiable certificate accounts in bearer form without recording ownership on the books of the Federal savings association: *Provided*, That any provisions of the Federal savings association's charter regarding membership and voting shall not apply

to such certificates.

(c) Use of collecting and paying agent. A Federal savings association may authorize any bank that is a member of the Federal Deposit Insurance Corporation to prepare, sign and deliver evidence of accounts, to collect and transmit funds obtained from those accounts, and to maintain records with respect to such accounts. The Federal savings association may provide for issuance of duplicate certificates, bond, security and other protection in connection with such activities. A Federal savings association may also authorize any such institution to pay an account according to its terms.

#### § 545.14 Determination and distribution of earnings.

(a) Rates of return. A Federal savings association may issue savings accounts earning interest at different rates of return, which may be fixed at the time the account is issued or may vary on any basis specified at the time the deposit is accepted, subject to § 563.10 of this chapter.

(b) Time of distribution. A Federal savings association may distribute earnings on savings accounts, or designated classes thereof, as provided in its charter and bylaws and the terms

of the account.

(c) Distribution on share accounts. No distribution of earnings on share accounts may be made under this section until provision has been made

for payment of expenses and for the pro rata portion of credits to reserves required by the Federal savings association's charter and by part 563 of this chapter.

#### § 545.15 Withdrawal requests.

(a) Right to require notice for withdrawal from savings account. A Federal savings association shall reserve the right to require at least seven days advance notice of intention to withdraw from savings accounts not having a fixed or minimum term of at least seven days or a prior notice-ofwithdrawal requirement of at least seven days.

(b) Payment of withdrawal requests. Unless otherwise specified in its charter, when a Federal savings association cannot pay withdrawal requests within seven days of the date of receipt of written request therefor, it shall number and file all requests in the order received and proceed in the following manner while any request remains unpaid for more than seven days:

(1) Requests shall be paid in numerical order, and as each number is reached the accountholder shall be paid the lesser of \$1,000 or the amount of the withdrawal request. If the amount of the request is not paid in full the request shall be renumbered, placed at the end of the list of requests, and acted upon in the same way when its new number is reached, until the request is paid in full. However, when a request is reached for payment, the Federal savings association shall so notify the accountholder by registered mail to his last address as recorded on the Federal savings association's books and, unless the accountholder, within fourteen days from the mailing of the notice, applies in person or in writing for payment, the request shall be cancelled and not paid. Regardless of any other provision in this section, the board of directors may pay on an equitable basis an amount not exceeding \$200 to any accountholder in any calendar month; and

(2) The Federal savings association shall allot to the payment of withdrawal requests the remainder of the Federal savings association's receipts from all sources after deducting therefrom amounts for expenses, required payments on indebtedness, earnings distributable in cash to holders of savings accounts, and a fund for general corporate purposes of not more than twenty percent of the Federal savings association's receipts from its accountholders and its borrowers.

(c) Grace period with respect to withdrawals. A Federal savings association may compute earnings on amounts withdrawn from its accounts having an indefinite term during the last three business days of any period for which earnings are distributable as if the withdrawal had been made immediately after the close of that period.

#### § 545.16 Public deposits, depositaries, and fiscal agents.

- (a) Definitions. As used in this section-
- (1) Moneys includes monies and has the meaning it has in applicable state
- (2) State law includes actions by a governmental body which has a charter adopted under the constitution of the state with provisions respecting deposits of public money of that body:

(3) Surety means surety under real and/or personal suretyship, and includes guarantor; and

(4) Terms in paragraph (b) of this section have the meanings they have under applicable state law.

(b) Authority to act as surety for public deposits. (1) A Federal savings association that is a deposit association may give bond or security for deposit in it of public moneys or investment in it by a governmental unit if required to do so by state law, either as an alternative condition or otherwise, regardless of the amount required. Any bond or security may be given and any substitution or increase thereof may be made under this section at any time.

(2) If state law requires as a condition of such deposit or investment that the Federal savings association or its bond or security, or any combination thereof, be surety for or with respect to other deposits or instruments, whether of that depositor or investor or of any other(s). and whether in the Federal savings association or in any other institution(s) having, when the investments or deposits were made, insurance by the Federal Deposit Insurance Corporation, the same shall become, or if the state law is self-executing shall be, such

surety.

(c) Depositaries and fiscal agents. Subject to regulation of the United States Treasury Department, a Federal savings association may serve as a depositary for Federal taxes, as a Treasury tax and loan depositary, or as a depositary of public money and fiscal agent of the Government or any other instrumentality thereof when designated for that purpose by such instrumentality and approved by the Office, and may satisfy any requirement in connection therewith, including maintaining accounts described in §§ 561.33, 561.52, 561.53, and 561.54 of this chapter; pledging collateral; and performing the

services outlined in 31 CFR 202.3(b) or any section that supersedes or amends § 202.3(b).

#### § 545.17 Funds transfer services.

A Federal savings association is authorized to transfer, with or without fee, its customers' funds from any account (including a line of credit) of the customer at the Federal savings association or at another financial intermediary to third parties or other accounts of the customer on the customer's order or authorization by any mechanism or device, including cashier's checks, conforming with applicable laws and established commercial practices.

## § 545.18 Issuance of mutual capital certificates.

A Federal mutual savings association may issue mutual capital certificates as its charter permits, subject to the requirements of § 563.74 of this chapter or as the Office may otherwise authorize in writing.

## § 545.19 Issuance of net worth certificates.

A Federal savings association may issue net worth certificates if authorized by the FDIC in accordance with 12 U.S.C. 1823(i).

## § 545.20 Borrowing, Issuing obligations and securities, and giving security.

Pursuant to sections 5(b)(2) and (b)(3) of the Act, a Federal savings association may borrow, give security, and issue notes, bonds, debentures, or other obligations, or other securities, including capital stock, subject to the provisions of Parts 561-571 of this chapter.

#### § 545.21 Give-aways.

(a) Definitions. (1) Give-away means any thing of value, or service performed in any part outside a Federal savings association's premises, given without adequate payment, but not including:

 Providing safety deposit facilities at reduced rental to members of the savings association.

(ii) Repaying to members of any part of amounts paid by them for safety deposit facilities located outside the savings association's facilities, or

(iii) Providing any service or thing of value as payment of interest.

(2) Doing business has the meaning it has in the statute described in paragraph (c) of this section, and "domestic savings association" means any savings association, building and loan, homestead association, or cooperative bank which is a domestic savings association under that statutory provision.

(b) Prohibition. No Federal savings association doing business in a state which has in effect a statutory provision as described in paragraph (c) of this section and regulatory restrictions adopted under that statute, shall:

(1) Condition the distribution of a give-away on the recipient's possessing, opening, or adding to a savings account, or maintaining a minimum balance

herein;

(2) Except under paragraph (d) of this section, refer in any of its advertising to any give-away, other than printed material of an educational or informational nature or a coin bank, with a cost not exceeding \$2.50; or

(3) Enter any agreement with, or accept funds for investment in a savings account from, any person engaging in

such activities.

- (c) Reciprocal statutory provision.

  The statutory provision referred to in paragraph (b) of this section must authorize a specified state official to impose any regulation restrictions on domestic savings associations of the state equivalent to those imposed on Federal savings associations by paragraphs (b) (1) and (2) of this section if, while the restriction is in force, Federal savings associations doing business in the state are likewise restricted.
- (d) Exception. Notwithstanding paragraph (b) of this section, a Federal savings association may advertise give-aways during a single period of thirty days ending not more than one year after it opens its first office.

### §§ 545.22-545.30 [Reserved]

## § 545.31 Election regarding classification of loans or investments.

- (a) If a loan or other investment is authorized under more than one section of the Home Owners' Loan Act of 1933, as amended, or this part, a Federal savings association may designate under which section the loan or investment has been made. Such a loan or investment may be apportioned among appropriate categories, and may be moved, in whole or part, from one category to another. To classify a loan as a real estate loan, a Federal savings association must rely substantially upon the real estate as the primary security for the loan.
- (b) For purposes of determining whether aggregate investments under one provision of the Home Owners' Loan Act of 1933, as amended, or this part exceed an applicable percentage-of-assets limitation, a loan commitment shall be counted as an investment and shall be included in total assets of a Federal savings association only to the

extent that funds have been advanced (and not repaid) pursuant to the commitment. The term "loan commitment" used in the preceding sentence includes a loan in process, a letter of credit, or any other commitment to extend credit.

(c) Loans sold to a third party shall be included in calculation of a percentageof-assets investment limitation only to the extent they are sold with recourse.

(d) A Federal savings association may make a loan secured by assignment of loans to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loans.

### § 545.32 Real estate loans.

(a) Authorization. Pursuant to sections 5(c)(1)(B) and 5(c)(2)(B), a Federal savings association may originate, invest in, sell, purchase, service, participate, or otherwise deal in (including brokerage or warehousing) loans made on the security of residential or nonresidential real estate, or interests in such loans, subject to the limitations

of this part.

(b) General-(1) Appraisals. A Federal savings association may make a real estate loan only after an appraiser approved by the Federal savings association's management (as that term is defined in § 563.171 of this chapter has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the Federal savings association by the insuring or guaranteeing agency. The Federal savings association shall pay the cost of any appraisal of the security property obtained by the Federal savings association after loan closing but prior to maturity of a loan, unless the borrower specifically requests the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan. The appraisals of any real estate required by this part shall be rendered in accordance with the general appraisal guidelines set forth in §§ 563.17l and 571.27 of this chapter.

(2) Initial repayments on real estate loans. Except as expressly authorized by this part, repayments on real estate loans shall begin not later than 60 days after the loan is disbursed: Provided. That if such loans are for construction, substantial alteration, repair, or improvement, repayments may begin not later than 38 months (24 months for loans secured by real estate consisting solely of a home or combination of home and business property) after the date of the first disbursement, and interest shall

be payable at least semi-annually until regular periodic payments begin.

(3) Adjustments. Subject to the limitations of § 545.33(e), a Federal savings association may adjust the interest rate, payment, balance, or term to maturity on any real estate loan as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value, or as provided in § 556.13 of this subchapter.

(4) Amortization. Subject to the limitations in §§ 545.33 and 545.35 of this part, a real estate loan may be fully amortized, partially amortized, non-amortized, or a line-of-credit loan, and the loan contract may provide for the deferral and capitalization of a portion

of the interest.

(5) Initial loan charges. Except as provided in § 563.35(d) of this chapter, a Federal savings association may require a borrower to pay necessary initial charges connected with making a loan, including the actual costs of title examination, appraisal, credit report, survey, drawing of papers, loan closing, and other necessary incidental services and costs, in such reasonable amounts as the board of directors may fix. The Federal savings association may collect the charges from the borrower and pay the persons rendering services.

(6) Escrow accounts. A Federal savings association may require that all or any part of the estimated annual taxes, assessments, insurance premiums, and other charges on any loan be paid in advance to the Federal savings association, in addition to interest and principal payments on the loan, to enable the Federal savings association to pay such charges as they become due, consistent with the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601–2617) ("RESPA").

(c) Security property. A loan is made on the security of real estate if:

(1) The security property is real estate pursuant to the law of the state in which

the property is located;

(2) The security interest of the Federal savings association may be enforced as a real estate mortgage or its equivalent pursuant to the law of the state in which the property is located;

(3) The security property is capable of

separate appraisal; and

(4) With regard to a security property that is a leasehold or other interest for a period of years, the term of the interest extends, or is subject to extension or renewal at the option of the Federal savings association, for a term of at

least five years following the maturity of the loan.

(d) Loan-to-value ratios. (1) At the time of origination, a real estate loan may not exceed 100 percent of the market value of the security property. A Federal savings association shall, by a vote of its board of directors, establish maximum loan-to-value ratios for loans made on the security of real estate, and the resolution adopting such ratios shall be included in the minutes of the directors' meeting. Home loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios adopted pursuant to this paragraph (d) with such excess secured by the savings account: Provided, That for loans originated in excess of 90 percent of the initial appraised value of the security property, the savings account shall consist only of funds belonging to the borrower, the borrower's family, or the borrower's employer, and the loans shall not exceed the appraised value of the real estate.

(2) With respect to home loans originated or refinanced in excess of 90 percent of the appraised value of the security property, that part of the unpaid balance that exceeds 80 percent of the property's value shall be insured or guaranteed by a mortgage insurance company that the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer."

(3) With respect to all other loans on the security of real estate originated in excess of 90 percent of the appraised value of the security property, a Federal savings association's board of directors shall approve each such loan prior to its origination and such approval shall be recorded in the minutes of its meeting.

(4) In determining compliance with maximum loan-to-value-ratio limitations for real estate loans, at the time of making a loan a Federal savings association shall add together the unpaid amount, or in the case of a lineof-credit loan the approved credit limit, of all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would have priority over the Federal savings association's lien, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed the applicable maximum loan-to-value-ratio limitations prescribed in this paragraph (d). In valuing the real estate security, a Federal savings association shall use the current appraised value of the security property, which may include any

expected value of improvements to be financed. "Value" for a real estate loan means the market value of the real estate.

#### § 545.33 Home loans.

Any loan made on the security of homes (including a unit of a condominium or cooperative), combinations of homes and business property, farm residences, and combinations of farm residences and commercial farm real estate (home loans) shall be subject to the limitations of this section.

(a) Term; interest. The loan term shall not exceed 40 years, with interest payable at least semi-annually, except as expressly authorized by this section or by § 545.32(b)(4) of this part.

(b) Repayment of principal. The loan balance, for other than nonamortized and line-of-credit loans, shall be repayable in at least semi-annual installments: Provided, That loans on the security of farm residences and combinations of farm residences and commercial farm real estate may be repayable in annual installments.

(c) Amortization. The loan contract may provide for the deferral and capitalization of all interest on loans to natural persons secured by borrower-occupied property and on which periodic advances are being made.

(d) Loan-to-value ratios. (1) At origination, the loan balance may not exceed the maximum loan-to-value ratios established pursuant to § 545.32(d) of this part. During the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from an adjustment authorized by paragraph (c) or (e) of this section. The board will assume continued compliance with the loan-to-value-ratio limitations where the original ratio met the requirements of this paragraph (d), but in no event may the loan balance exceed 125 percent of the original appraised value of the property during the term of the loan, unless pursuant to the paragraph (e)(2)(i) of this section or unless the loan contract provides that the payment shall be adjusted at least once every five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan. The 125 percent limitation shall not apply to that portion of a loan balance that is interest received in the form of a percentage of the appreciation in value of the security property pursuant to paragraph (b)(3) of § 545.32 or as permitted by § 556.13 of this subchapter.

(2) If, at maturity of a home loan that provides for adjustments pursuant to paragraph (c) or (e) of this section, the ratio of the loan balance to the current market value of the security property exceeds the maximum permissible under § 545.32(d) of this part the association may offer to refinance the loan if:

(i) It complies with § 545.32(d)(2) of

this part, and

(ii) The loan contract requires that, in addition to full or partial amortization of the loan, the pro rata portion, based on the number of installments due annually, of estimated annual taxes and assessments on the security property be paid in advance to the Federal savings association with each installment payment.

(e) Adjustments. For any home loan secured by borrower-occupied property, or property to be occupied by the borrower, adjustments to the interest rate, payment, balance, or term to maturity shall comply with the limitations of this paragraph (e). The

disclosure and notice requirements of § 563.99 of this chapter shall also be

complied with.

(1) Adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or of a national or regional index that measures the rate of inflation or the rate of charge in consumer disposable income, which index is readily available to and verifiable by the borrower and is beyond the control of the association. A Federal savings association also may increase the interest rate pursuant to a formula or schedule that specifies the amount of the increase, the time at which it may be made, and which is set forth in the loan contract. A Federal savings association may decrease the

interest rate at any time.

(2) Adjustments to the payment and the loan balance that do not reflect an interest-rate adjustment may be made if (i) the adjustments reflect a change in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the control of the association, (ii) in the case of a payment adjustment, the adjustment reflects a change in the loan balance or is made pursuant to a formula, or to a schedule specifying the percentage or dollar change in the payment as set forth in the loan contract or (iii) in the case of an open-end line-of-credit loan, the adjustment reflects an advance taken by the borrower under the line-ofcredit and is permitted by the loan contract.

(3) Any combination of indices or a moving average of index values may be

used as an index, and an association may use more than one index during the term of a loan, if set forth in the loan contract

(4) Adjustment notices shall be provided in accordance with \$ 563.99 of this chapter. In the case of an open-end line-of-credit loan, notice of an adjustment to the payment or the balance need not be given if the adjustment reflects advances taken by the borrower under the line of credit, and advance notice of a change in the interest rate permitted by the loan contract (and any resulting change in the payment) need not be given. In the case of a non- or partially-amortized loan, (including a loan with a "call' provision), a Federal savings association shall provide the borrower with notice of maturity at least 90 but not more than 120 days prior to the date of expected

(5) The loan term may be adjusted only to reflect a change in the interest rate, the payment or the loan balance. A loan contract may provide a Federal savings association with the right to call the loan due and payable either after a specified number of years has elapsed following closing or upon the occurrence of a specified event external to the loan.

(f) Loans on cooperatives. A loan made on the security of a cooperative under this section shall comply with the

following requirements:

(1) Loans on the security of cooperative housing developments ("blanket" loans). The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration.

(2) Loans on individual cooperative units. Such loans may be made on the

security of:

(i) A security interest in stock, membership certificate, or other evidence of ownership issued to a stockholder or member by a cooperative housing organization; and

(ii) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such

organization.

(g) Loans to facilitate trade-in or exchange. Loans made to facilitate the trade-in or exchange of security property shall not exceed the loan-to-value ratios adopted by the association and shall be repayable within eighteen months.

(h) Notice of housing creditors regarding alternative mortgage transactions. Pursuant to Title VIII, Pub. L. 97–320, housing creditors that are not commercial banks, credit unions, or Federal savings associations may make

alternative mortgage transactions (as defined by section 803 of Pub. L. 97-320 and as further defined and described by applicable regulations identified herein) notwithstanding any state constitution, law or regulation. In accordance with section 807(b) of Pub. L. 97-320, the provisions listed below are identified as appropriate and applicable to the exercise of this authority, and all regulations not identified herein are deemed inappropriate and inapplicable: Section 545.32(b)(3) and (b)(4), § 545.33(c) and (e), and § 563.99. Housing creditors engaged in credit sales should read the term "loan" as "credit sale" wherever appropriate.

## § 545,34 Limitations for home loans secured by borrower-occupied property.

(a) Due-on-sale clauses. Subject to the provisions of 12 U.S.C. 1701j-3 (which preempts state prohibitions of due-on-sale clauses) and part 591 of this chapter, a Federal savings association may include a provision in its loan instrument whereby the Federal savings association may at its option, declare immediately due and payable sums secured by the Federal savings association's security instrument if all or any part of the real property securing the loan is sold or transferred by the borrower without the Federal savings association's prior written consent.

(b) Late charges. A Federal savings association may include in the loan contract a provision authorizing the imposition of a late charge with respect to the payment of any delinquent periodic payment. With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by a Federal savings association, unless (1) any monthly billing, coupon, or notice the Federal savings association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed, and (2) the Federal savings association has disclosed the information pertaining to the charge pursuant to § 563.99 of this chapter. A Federal savings association may not impose a late charge more than one time for late payment of the same installment, and any installment payment made by the borrower shall be applied to the longest outstanding installment due. A Federal savings association shall not assess a late charge as to any payment received by it within fifteen days after the due date of such payment. No form of such late charge permitted by this paragraph (b) shall be considered as interest to the

Federal savings association and the Federal savings association shall not deduct late charges from the regular periodic installment payments on the loan, but must collect them as such from the borrower.

(c) Loan payments and prepayments. Except for loans to natural persons secured by borrower-occupied property and on which periodic advances are being made, payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or partly to offset payments which subsequently accrue under the loan contract. Subject to the disclosure provisions of § 563.99, a Federal savings association may impose a penalty on prepayment of a loan as provided in the loan contract. Notwithstanding the above, for any home loan secured by borrower-occupied property and on which the yield may be adjusted pursuant to § 545.33(e), a Federal savings association may not impose a penalty on any prepayment made within 90 days following notice of an adjustment.

#### § 545.35 Other real estate loans.

A loan made on the security of residential real estate other than a home or on the security of nonresidential real estate shall be subject to the limitations of this section.

(a) The loan term shall not exceed 30 years, except for nonamortized loans, which shall be repayable within five years. Partially amortized loans shall be repayable with principal and interest payments sufficient to meet a 30-year amortization schedule. A partially amortized loan is any loan which is repayable in full in a lump sum at the end of the loan term but which requires partial amortization during the loan term by regular monthly payments which include both principal and interest.

(b) Interest shall be payable at least semi-annually, except to the extent that the loan contract provides for the deferral and capitalization of interest.

(c) At origination, the loan balance may not exceed the maximum loan-tovalue ratios specified in 545.32(d) of this part. During the term of the loan, the loan-to-value ratio may increase above the maximum permissible percentage if the increase results from the deferral and capitalization of interest, but at no time during the loan term may the ratio of the loan balance to the initial appraised value of the security property exceed 100 percent as a result of the deferral and capitalization of interest.

(d) A Federal savings association's aggregate investment in nonresidential real estate loans under this section shall not exceed 400 percent of the Federal savings association's capital (as determined under section 5(t) of the Act), unless the Office finds that such additional amount will not present a significant risk to the safe and sound operation of the Federal savings association and is consistent with prudent operating practices. If the Office authorizes any Federal savings association to exceed the 400 percent of capital limitation, the Office shall closely monitor the condition and lending activities of such Federal savings association to ensure that the Federal savings association carries out all authority under section 5(c) of the Act in a safe and sound manner and complies with this paragraph (d) and all other applicable laws and regulations.

### § 545.36 Loans to acquire or to Improve real estate.

In addition to any other limitations in this part pertaining to real estate loans, loans for the purpose of acquiring unimproved real estate (or loans on the security of unimproved real estate already owned by the borrower), for financing the development of real estate, on the security of building lots and sites (including a let on which a manufactured home will be located), for construction of structures on real estate, or for the rehabilitation of real estate shall be subject to the provisions of this

(a) Such loans shall not exceed the loan-to-value ratios adopted under § 545.32(d) of this part.

(b) Such loans shall be repayable

within the following terms: (1) Two years: loans for the construction or rehabilitation of an individual single-family dwelling;

(2) Three years: loans for the acquisition of land;

(3) Six years: loans for the construction or rehabilitation of multifamily dwellings, of nonresidential real estate, or of more than one single-family dwelling, and loans on the security of building lots and sites (other than for a borrower's principal residence);

(4) Eight years: loans to finance the development of real estate;

(5) Fifteen years: loans on the security of building lots and sites for singlefamily dwellings to be used as the borrower's principal place of residence (as evidenced by a borrower's certification of intention that the property will be so used).

(c) For loans made to finance the development of real estate, loans on the security of building lots and sites, and

construction loans, upon release of any portion of the security property from the lien securing the loan, the principal balance of the loan shall be reduced by an amount at least equal to that portion of the outstanding loan balance attributable to the value of the property to be released. "Value" for the purposes of the preceding sentence is the appraised value fixed at the time the loan was made.

(d) Loan documentation for development loans shall contain a preliminary development plan that is satisfactory to the Federal savings association. In addition, loans to one borrower (as defined in § 563.93 of this chapter) made under this section for any one development project shall not exceed two percent of an association's assets. A development project includes all facilities that compose an integrated development plan. With respect to construction loans, Federal savings associations shall reserve the right to impose limits on the number of structures under construction at a given time.

#### § 545.37 Combination loans.

(a) Any loans authorized by this part may be combined, with the term of each loan beginning at the end of the term of the preceding loan and interest and principal payment requirements as specified in the applicable sections of this part.

(b) With respect to a combination of loans to finance development of real estate and loans on building lots and sites and/or construction loans, whether or not development has been completed:

(1) Beginning not more than three years after the initial disbursement of loan proceeds for construction purposes, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the principal loan balance applicable to any improvement, including the building site, over the remaining term of the loan, and

(2) Beginning not more than four years after such disbursement, the borrower shall make monthly payments sufficient to amortize, on a straight-line basis, that portion of the loan balance not applicable to the construction of any improvement and its building site, over the remaining term of the loan.

(c) For a combination loan that includes the acquisition of land, the loan contract shall provide that if the development or construction to be financed with the loan has not commenced by the end of the third year from the initial disbursement of the loan proceeds, the loan balance outstanding shall be due and payable.

(d) Notwithstanding any other provisions of this section, a combination loan for construction inclusive of acquisition and/or development, other than loans for single-family dwellings to be used as the principal place of residence of the borrower (which may be repayable within the period allowed by this section plus 40 years), shall be repayable within eleven years.

#### § 545.38 Insured and guaranteed loans.

Without regard to any other limitations of this part, a Federal savings association may make or invest in any of the following:

(a) Loans on the security of residential real estate that constitute guaranteed or insured loans as defined in § 541.13 or § 541.17 of this chapter, or that are insured or guaranteed by an agency or instrumentality of a state

(1) whose full faith and credit is pledged to support the insurance or

guarantee, or

(2) whose insurance or guarantee program is approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) Loans on the security of residential real estate guaranteed under the Farmers Home Administration (FmHA) Rural Housing Program: Provided, That

 FmHA guarantees at least eighty percent of the principal amount and accrued interest of each loan made under the program;

(2) The loan terms must be acceptable to FmHA; and

(3) The Federal savings association invests not more than the greater of 2.5 percent of its assets or one-half of its regulatory capital in the aggregate outstanding balance of the non-guaranteed portions of all loans made under the program and held by the Federal savings association.

(c) Loans on the security of nonresidential real estate that are guaranteed by one of the following agencies:

(1) Economic Development
Administration (under the Public Works
and Economic Development Act of 1965,
as amended, or the successor to that
Act; or the Trade Act of 1974, as
amended);

(2) Farmers Home Administration (under the Consolidated Farm and Rural Development Act of 1974, as amended);

(3) Small Business Administration (under the Small Business Investment Act of 1958, as amended; or the Small Business Act of 1953, as amended).

## § 545.39 Loans guaranteed under the Foreign Assistance Act of 1961.

(a) Pursuant to section 5(c)(4)(C) of the Act, a Federal savings association may invest in any housing project loan guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect before December 30, 1969; any loans guaranteed under section 224 of that Act, as in effect before December 30, 1969; or any loan guaranteed under sections 221 or 222 of that Act, as in effect after December 29, 1969, subject to paragraph (b) of this section.

(b) Requirements. For any investment

made pursuant to this section:

(1) The loan agreement shall specify what constitutes an event of default, and provide that upon default in payment of principal or interest under such agreement, the entire amount of the outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option; and

(2) The contract of guaranty shall cover 100 percent of any loss of investment thereunder, except for any portion of the loan arising out of fraud or misrepresentation for which the party seeking payment is responsible, and provide that the guarantor shall pay for any such loss in U.S. dollars within a specified reasonable time after the date of application for payment.

#### § 545.40 Loans on low-rent housing.

Limitations in this part relating to maximum loan terms and loan-to-value ratios shall not apply to any loan secured by a lien on real estate which is, or is being constructed, remodeled, rehabilitated, or renovated to be, the subject of:

(a) An annual contributions contract for low-rent housing under former sections 23 or 5 of the United States Housing Act of 1937, as amended, or

(b) A Housing Assistance Payment (HAP) contract for low-income housing under section 8 of the United States Housing Act of 1937, as amended, which the borrower has agreed in writing to enter into for the maximum term available for the particular project type and financing;

Provided, That no loan by a Federal savings association pursuant to the authority of this section shall exceed the applicable loan-to-value ratio specified in § 545.32(d) or, the purchase price if the security property is to be purchased by a local public housing authority, and in no event, shall loan proceeds in excess of 80 percent of such appraised value be disbursed to the borrower until the Department of Housing and Urban Development has issued its final approval of the project under the subsidy program. Loans insured under the National Housing Act may be made on terms and conditions permitted by the insuring agency as provided in § 545.38 of this chapter.

## § 545.41 Community development loans and investments.

(a) General. A Federal savings association may make investments pursuant to section 5(c)(3)(B) of the Act that are located within any of the following areas:

(1) Any neighborhood strategy area (as defined in 24 CFR 570.301(c)) receiving concentrated development assistance under Title I of the Housing and Community Development Act of

1974, as amended;

(2) Any general location (as specified in 24 CFR 570.306(b)(3)(ii)) which is specified in a community's Housing Assistance Plan (as defined in 24 CFR 570.306) as an area for housing assistance goals and which is receiving such concentrated assistance;

(3) Any urban renewal area (as defined in section 110(a) of the Housing Act of 1949, as amended) receiving such concentrated assistance in order to finish incomplete urban renewal

projects; and

(4) Any locales specified by a community as receiving Urban Development Action Grants or otherwise receiving significant amounts of such concentrated assistance.

(b) Investment in loans and other obligations secured by liens on real estate. Such investments shall conform to all limitations in this part 545 applicable to the type of real estate securing the investments.

(c) Investments in real estate.

Investments in real estate may not exceed the appraised value of the property plus usual settlement costs. In determining the two-percent statutory investment limit, the following rules shall apply:

(1) A reasonable allowance for depreciation computed under the straight-line method may be deducted from the cost of improved real property or investments in improved real property owned by the Federal savings association:

(2) If a leasehold interest in land is acquired, the amount of the investment as to rental obligations under the lease shall be determined on the basis of the "present value of an annuity due" and for the purpose of such determination, the worth of money shall be deemed to be a market rate as of the date of the lease; and

(3) The investment in improvements to land in which the Federal savings association has a leasehold interest shall be the cost to the Federal savings association of the improvement, less reasonable allowance for amortization computed under the straight-line method.

## § 545.42 Home Improvement loans.

For any home improvement loan, with or without security, made pursuant to section 5(c)(1)(J) of the Act, installments shall be payable at least quarterly, the first installment due no later than 120 days from the date the loan is made and the final installment due no later than 20 years and 32 days from such date. Installments shall be substantially equal except to the extent that the loan complies with mortgage provisions authorized by §§ 545.32(b)(4) and 545.33 (e) and (f) of this part. No loan centract may provide for the deferral and capitalization of interest on a loan made under this section.

#### § 545.43 State housing corporation investment-insured.

A Federal savings association may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation (as defined in § 571.8 of this chapter), pursuant to section 5(c)(1)(P) of the Act, provided that the aggregate outstanding direct investment and investment in loans and loan commitments under this section shall not exceed 30 percent of the Federal savings association's assets at the time of investment, and shall not exceed 10 percent of such assets for investments in state housing corporations located outside the Federal savings association's home state.

### § 545.44 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

Without regard to any other provisions of this part, a Federal savings association may enter into and perform any mortgage transaction with the Federal Home Loan Mortgage Corporation specified in section 305(a) of the Federal Home Loan Mortgage Corporation Act. For purposes of this section, the term "mortgage" shall have the meaning prescribed in section 302(d) of such Act.

### § 545.45 Manufactured home financing.

(a) Definitions. (1) The term Manufactured home shall have the same definition as that contained in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6).

- (2) Manufactured home chattel paper. The term "manufactured home chattel paper" means a document evidencing an installment sales contract or a loan or interest in a loan secured by a lien on one or more manufactured homes and equipment installed or to be installed therein.
- (3) Manufacturer's invoice price. The term "manufacturer's invoice price" means a manufacturer's itemized

charges, shown on its invoice, for a specifically identified manufactured home, furnishings, equipment, and accessories installed by the manufacturer, and freight.

(b) General investment authority. Pursuant to section 5(c)(1)(J) of the Home Owner's Loan Act, a Federal savings association may invest in manufactured home chattel paper and interests therein without limitation as to percentage of assets.

(c) Inventory financing. A Federal savings association may invest in manufactured home chattel paper which finances a manufactured home dealer's

acquisition of inventory, if:

(1) The inventory is held for sale by the dealer in its ordinary course of

(2) The loan evidenced by the chattel paper is the dealer's obligation; and

(3) The loan amount does not exceed

the following:

(i) For new manufactured homes, 100 percent of manufacturer's invoice price for each manufactured home and equipment to be installed by the dealer;

(ii) For used manufactured homes, 75 percent of appraised market value or other generally accepted valuation of each manufactured home, including

installed equipment.

(d) Retail financing—(1) Insured and quaranteed loans. A Federal savings association may invest in retail manufactured home chattel paper that is insured or guaranteed, as defined in § 541.13 or § 541.17 of this subchapter, or that has a commitment for such insurance or guarantee.

(2) Conventional loans. A Federal savings association may invest in conventional retail manufactured home

chattel paper if:

(i) The manufactured home is located at a manufactured home park or other permanent or semi-permanent site;

(ii) The manufactured home chattel paper is payable within 20 years, in monthly payments which are substantially equal except to the extent that the financing complies with mortgage provisions authorized under § 545.33 (c) and (e) of this part; and

(iii) The financed amount (excluding time-price differential or interest, however computed) does not exceed (A) in the case of a new manufactured home, 90 percent of the buyer's total costs, including freight, itemized setup charges, sales or other taxes, filing and recording fees imposed by law and premiums for related insurance, or (B) in the case of a used manufactured home, 90 percent of the appraised market value or other generally accepted valuation of the manufactured home plus sales and other taxes, filing and recording fees

imposed by law, premiums for related insurance, and freight and itemized setup changes, if any.

(3) Combination loans. A Federal savings association may invest in manufactured home chattel paper secured by combinations of manufactured homes and lots on the following terms:

(i) Affixed manufactured homes. If the wheels and axles have been removed and the manufactured home is permanently affixed to a foundation, a loan secured by a combination of manufactured home and lot on which it sits may be treated as a home loan under § 545.33.

(ii) Unaffixed manufactured homes. If the manufactured home is not affixed in the manner described in paragraph (d)(3)(i) of this section, a Federal savings association may make a loan secured by a combination of manufactured home and lot on which it is or is to be located if the financing complies with the requirements of paragraphs (d)(2)(i) and (d)(2)(ii) of this section and the loan-tovalue ratio does not exceed 75 percent of the appraised value of the lot and lot improvements and 90 percent of the buyer's total costs of the manufactured home (or valuation of used manufactured home) as defined in paragraph (d)(2)(iii) of this section.

(iii) Insured and guaranteed loans. Notwithstanding the other provisions of paragraph (d)(3) of this section, a Federal savings association may invest in a combination manufactured home and lot chattel paper that is insured or guaranteed as defined in § 541.13 or § 541.17 of this subchapter, or that has a commitment for such insurance or guarantee.

(e) Sale of paper. All manufactured home chattel paper sold by a Federal savings association shall be sold without recourse, as defined in § 561.55 of this chapter.

## § 545.46 Commercial loans.

(a) Investment authority. Pursuant to section 5(c)(2)(A) of the Act, a Federal savings association may invest in, sell. purchase, participate in, or otherwise deal in loans for commercial, corporate, business, or agricultural purposes: Provided, That at any one time the total investment made under this section shall not exceed five percent of the Federal savings association's assets (or 7.5 percent in the case of a savings bank) prior to January 1, 1984, and ten percent thereafter.

(b) Loans covered. Notwithstanding the provisions of § 545.31 of this chapter, the percentage-of-assets limitations in

paragraph (a) of this section shall apply

(1) Overdraft loans on demand accounts; and

(2) Commercial loans not secured by real estate that are made by a service corporation of the Federal savings association:

Provided, That, in the case of a service corporation with multiple stockholders, the amount of such loans attributed to one stockholder Federal savings association will be calculated pro rata on the basis of the percentage of the service corporation's stock owned by the Federal savings association.

#### § 545.47 Overdraft loans.

(a) Authorization. Pursuant to section 5(c)(1)(A) of the Act, a Federal savings association may extend secured or unsecured credit to cover payment of drafts or other funds transfer orders in excess of the available balance of an account on which they are drawn, subject to the limitations of this section.

(b) Loans not subject to this section. Extensions of credit through the use of drafts or other funds transfer orders for purposes other than the payment of bona fide overdrafts or which result in a debit balance existing for more than 30 days after notice shall not be considered to be made pursuant to this section.

(c) Demand accounts. Overdraft credit relating to demand accounts is subject to specific limitations set forth in § 545.46 of this chapter.

### § 545.48 Letters of credit.

(a) A Federal savings association may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code or the Uniform Customs and Practice for Documentary Credits and may pledge collateral to secure its obligations thereunder, subject to the following requirements:

(1) Each letter of credit must conspicuously state that it is a letter of

credit:

(2) The issue's undertaking must contain a specified expiration date or be for a definite term, and must be limited in amount;

(3) The issuer's obligation to pay must be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and

(4) The account party must have an unqualified obligation to reimburse the issuer for payments made under the

letter of credit.

(b) To the extent funds are advanced under a letter of credit without compensation from the account party, the amount shall be treated as an extension of credit subject to percentage-of-assets limits and other requirements under an applicable provision of this part 545.

#### § 545.49 Loans on securities.

A Federal savings association may invest in loans secured by obligations of, or by obligations fully guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States named in \$ 566.1(g)(3) of this chapter, if:

(a) The borrower is a financial institution insured by the Federal Deposit Insurance Corporation or is a broker or dealer registered with the Securities and Exchange Commission; and

(b) The market value of the securities for each loan at least equals the amount of the loan at the time it is made.

#### § 545.50 Consumer loans.

(a) Authorization. Pursuant to section 5(c)(2)(D) of the Act, a Federal savings association may make consumer loans, subject to the limitations of this section.

(b) Definition. Consumer loans include loans for personal, family or household purposes and loans reasonably incident thereto, and may be made as either open-end or closed-end consumer credit, but does not include credit extended in connection with credit cards nor bona fide overdraft loans.

(c) Loans to dealers in consumer goods. A Federal savings association may include loans to dealers in consumer goods to finance inventory and floor planning in the total investment made under this section. For purposes of the limitations on loans to one borrower, loans to dealers in consumer goods to finance inventory and floor planning shall be treated as commercial loans.

#### § 545.51 Credit cards.

(a) Authorization. Pursuant to section 5(b)(4) of the Act, a Federal savings association may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations, subject to the limitations of this section.

(b) Credit card operations may be subject to § 545.141 of this part. If a personal security identifier, as defined in § 545.141(a)(2), is used in conjunction with a credit card, the identifier may not be disclosed to a third party.

#### § 545.52 Loans on savings accounts.

(a) Authorization. Pursuant to section 5(c)(1)(A) of the Act, a Federal savings association may make loans on the

security of its savings accounts, whether or not the borrower is the owner of the account, subject to the limitations of this section.

(b) Loans may be made pursuant to this section if the Federal savings association obtains a lien on, or a pledge of, such accounts as security therefor. Such a loan shall not exceed the withdrawal amount of the savings account and shall not be made when the Federal savings association has any unpaid application for withdrawal on file more than 14 days.

#### § 545.53 Finance leasing.

(a) Authorization. Pursuant to sections 5(c)(1)(B), (c)(2)(A), and (c)(2)(D) of the Act, a Federal savings association may engage in leasing activities that are the functional equivalent of lending, subject to the limitations of this section.

(b) General. (1) A Federal savings association may become the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property, may obtain an assignment of a lessor's interest in a lease of such property, and may incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if:

(i) The lease is a net, full-payout lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of the lease and

(ii) At the expiration of the lease, the Federal savings association s interest in the property shall be liquidated or released on a net basis as soon as practicable.

(2) A lease of tangible personal property made to a natural person for personal, family or household purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in consumer loans. A lease made for commercial, corporate, business or agricultural purposes pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in commercial loans. A lease of residential or nonresidential real property made pursuant to this section shall be subject to all limitations applicable to the amount of a Federal savings association's investment in real estate

- (c) Definitions. For the purposes of this section:
- (1) The term "net lease" means a lease under which the Federal savings association will not, directly or

indirectly, provide or be obligated to provide for:

 (i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) The purchasing of parts and accessories for the leased property: Provided, That improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this section;

(iii) The loan of replacement or substitute property while the leased

property is being serviced;

(iv) The purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) The renewal of any license, registration of filing for the property unless such action by the Federal savings association is necessary to protect its interest as an owner or

financier of the property.

(2) The term "full-payout" lease means one from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals, estimated tax benefits, guarantees and other sources, and the estimated residual value of the property at the expiration of the initial term of the lease:

Provided, That no more than 20 percent of the return may be realized from the residual value of the property at the expiration of the initial term of the lease. Both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee, and not on the residual market value of the leased property. The maximum term of a full-payout lease shall be 40 years.

(d) Salvage powers. If, in good faith, a Federal savings association believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, the provisions of paragraphs (b) and (c) of this section shall not prevent the Federal

savings association:

(1) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease:

(2) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(3) From including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (d)(1) and (d)(2) of this section.

### §§ 545.54-545.70 [Reserved]

### § 545.71 Liquid assets.

A Federal savings association may invest in assets that are described in § 566.1(g) of this chapter. For purposes of this section, the maturity limitations (except those for banker's acceptances) of § 566.1(g) shall not apply.

#### § 545.72 Government obligations.

Pursuant to section 5(c)(1)(H) of the Act, a Federal savings association may invest in obligations of or issued by any state, territory or possession of the United States or political subdivision thereof (including any agency, corporation, or instrumentality), subject to the following conditions:

(a) Government obligations must continue to hold one of the four highest national investment grade ratings, or must be issued by a public housing agency and backed by the full faith and

credit of the United States.

(b) Notwithstanding the limitations contained in paragraph (a) of this section, a Federal savings association may invest up to one percent of its assets in the obligations of a state, territory, possession or political subdivision in which the association's home office or a branch office is located.

(c) Investment in gold-related obligations is prohibited.

## § 545.73 Inter-American Savings and Loan Bank.

Pursuant to section 5(c)(4)(C) of the Act, a Federal savings association may invest in the share capital and capital reserve of the Inter-American Savings and Loan Bank, subject to the following conditions:

(a) The Federal savings association's regulatory capital meets the requirements of § 567.2 of this chapter, including any individual minimum capital requirement established under § 567.3 of this chapter or by a capital directive issued pursuant to § 567.4 of this chapter, and all losses have been offset by specific loss allowances to the

extent required by § 563.172 of this chapter;

(b) The Federal savings association's aggregate investment pursuant to this paragraph (b), including the amount of any obligations undertaken to provide said Bank with reserve capital in the future (call-able capital), will not, as a result of such investment, exceed one-quarter of one percent of its assets or \$100,000, whichever is less; and

(c) The Federal savings association's aggregate investment under this paragraph (c) and its aggregate outstanding principal amount of investment under section 5(c)(4)(C) of the Act, will not, as a result of such investment, exceed one percent of its assets.

#### § 545.74 Service corporations.

- (a) Definitions. As used in this section—
- (1) Aggregate outstanding investment means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of service corporations and amounts paid to the association to retire obligations of service corporations. It also includes all nonconforming loans and conforming loans to the extent that they exceed the amounts specified in paragraph (d)(2) of this section.
- (2) Conforming loan means a loan or portion thereof which a Federal savings association may make under any provision of this part other than this section, except a loan made under 12 U.S.C. 1464(c)(3)(C)-(D). A guarantee or take-out commitment with respect to a loan which could have been made by a Federal savings association as a conforming loan may be deemed a conforming loan for purposes of this section if the Federal savings association complies with all requirements of this chapter, including appraisal and recordkeeping requirements, as though it were itself making the loan subject to its guarantee or take-out commitment.
- (3) Joint venture means any joint undertaking by a service corporation or a wholly-owned subsidiary thereof with one or more persons or legal entities in any form, including a joint tenancy, tenancy in common, or partnership and including investment in a corporation other than a wholly-owned subsidiary.
- (4) Subsidiary includes a whollyowned subsidiary and any joint venture in which a service corporation or wholly-owned subsidiary thereof:

(i) Owns, controls, or holds with power to vote more than 25 percent of the capital stock,

(ii) Is a general partner, or (iii) Is a limited partner and has contributed more than 25 percent of the

limited partnership's capital.

(b) General. Pursuant to 12 U.S.C. 1464(c)(4)(B), a Federal savings association may invest in service corporations organized under the laws of the state (including the District, commonwealth, territory or possession) in which the association's home office is located, provided that:

(1) The service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist of one or more of the activities set forth in paragraph (c) of this section, or are otherwise specifically approved by the Office subsequent to the Office's review of an

application;

(2) Approval of the Office is obtained before any activity of the service corporation is performed through one or more joint ventures if a director, officer, or controlling person of any stockholder of the service corporation has a direct or indirect beneficial interest in the joint

(3) If all of the capital stock is held by fewer than five savings associations, or more than 40 percent of such stock is held by one savings association, with a home office in such state, then the consolidated debt outstanding at any one time (to holders of its capital stock and to others) of the service corporation and its subsidiaries may not exceed:

(i) Ten times the total of the service corporation's consolidated regulatory capital and its unsecured debt (excluding accounts payable incurred in the ordinary course of business and paid within 60 days) to holders of at least 25

percent of its capital stock; or (ii) Twenty times such total if the service corporation is engaged solely in the activities set forth in paragraph (c)(1)(i) of this section. The consolidated debt of the service corporation and its subsidiaries shall include the entire amount of any obligation of the service corporation or subsidiary resulting from the sale of loans with recourse;

(4) The service corporation must agree in writing to permit and to pay the cost of such examination as the Office deems

necessary;
(5) The Office may limit service corporation activities, or refuse to permit activities, for supervisory

(6) Prior approval of the Office must be obtained for investment in a service corporation or for investment by a service corporation in a joint venture or subsidiary if the purpose of the investment is to acquire a going business for an amount exceeding the fair market value of the tangible net assets of that business from a director or officer of an association which owns any of the capital stock of the service corporation or from an entity in which a director or officer of the association has a direct or indirect beneficial interest or is a director, officer, controlling person. partner, or trustee.

(7) The association shall notify the FDIC and the Office not less than 30 days prior to the establishment, or acquisition of any service corporation, and not less than 30 days prior to the commencement of any new activity through a service corporation. This notice requirement is in addition to any application that may be required under paragraph (c) of this section. Notice required under this paragraph (b)(7) shall be made to the Office as follows: one copy of such notice shall be submitted to the Senior Deputy Director for Supervision (Operations) and one copy of such notice shall be submitted to the District Director.

(c) Permitted activities. A service corporation in which a Federal savings association may invest is permitted to engage in such activities reasonably related to the activities of Federal savings associations as the Office may approve. Applications for approval to engage in such activities shall be made to the District Director. In addition, a service corporation may engage in the following activities without prior Office approval provided the notice required by paragraph (b)(7) of this section has been given:

(1) Loans. Originating, investing in, selling, purchasing (including purchasing participations in) servicing, or otherwise dealing in (including brokerage or warehousing), any of the following:

(i) Loans, and participations in loans, on a prudent basis and secured by real estate or liens on manufactured homes;

(ii) Loans, and participations in loans with or without security, for altering, repairing, improving, equipping, or furnishing real estate;

(iii) Loans and participations in loans for business purposes secured in part by real estate and insured or guaranteed by an agency of the United States;

(iv) Educational loans and participations therein;

(v) Consumer loans, including inventory and floor planning loans, and participations therein;

(vi) Commercial loans and participations therein: Provided, That: such loans together with commercial loans made by the parent association pursuant to § 545.46 of this part do not

exceed ten percent of the assets of the parent. Where a service corporation is owned by more than one association, each parent for purposes of this calculation shall include a portion of the subsidiary's commercial loans in the proportion of that parent's investment in the service corporation.

(2) Services primarily for financial institutions. Performing any of the following services, primarily for

financial institutions:

(i) Credit analysis, appraising, construction loan inspection, and abstracting;

(ii) Developing and administering personnel benefit programs, including life insurance, health insurance, and pension or retirement plans:

(iii) Research, studies, and surveys; (iv) Developing and operating storage facilities for microfilm or other duplicate

(v) Advertising, brokerage and other services to procure and retain both savings accounts and loans, but not pooling savings accounts or soliciting or promoting pooled savings accounts;

(vi) Serving as escrow agent or as trustee under deeds of trust, including executing and delivering conveyances, reconveyances, and transfers of title;

(vii) Providing liquidity management, investment, advisory and consulting

(viii) Providing clerical, accounting, and internal auditing services;

(ix) Establishing, owning, leasing, operating or maintaining remote service

(x) Purchase of office supplies, furniture, and equipment.

(3) Real estate services. (i) Maintaining and managing real estate. including real estate used for agricultural purposes;

(ii) Managing owners' associations for condominium, cooperative, Planned Unit Development or other rental real estate

projects;

(iii) Providing home ownership and financial counseling;

(iv) Providing relocation services;

(v) Providing real estate brokerage services for property owned by an association that owns capital stock of the service corporation, the service corporation, or a joint venture in which the service corporation participates, but not for property owned by third parties;

(vi) Acquiring real estate for prompt development or subdivision, for construction of improvements, for resale or leasing to others for such construction, or for use as manufactured home sites: Provided, That any development, subdivision, and construction of improvements is to be

completed within eleven years after acquisition of the real estate, unless such period is extended by the District Director upon written application by the service corporation, which application shall be supported by information evidencing that the service corporation will proceed or has proceeded in accordance with a prudent development plan and has not caused undue delay in the completion of construction: and Provided further, That acquisition of an option to purchase is not an acquisition for the purpose of determining the periods provided for in this paragraph

(vii) Acquiring improved real estate or manufactured homes to be held for rental or resale, or for remodeling, renovating, or demolishing and rebuilding for sale or rental;

(viii) Acquiring, maintaining and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities: Provided, That without prior approval of the Office, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed their consolidated regulatory capital.

(4) Securities brokerage services. (i) Execution of securities transactions on an agency or riskless principal basis solely upon the order of and for the account of customers, and the provision of standardized and individualized investment advice to individuals or entities, provided that the service

corporation:

(A) Conducts securities brokerage and investment advisory activities in an area that is clearly identified and distinguished from the areas where the association's depository functions are

performed:

(B) Distinguishes advertising by the service corporation from that of the association, such that advertising does not confuse securities transactions executed, securities purchased, or investment advice provided by the service corporation with federallyinsured deposits; that the advertising indicates that the service corporation and broker-dealer, and not the association, is providing the securities brokerage or investment advisory services, identifies the broker-dealer in advertising, and does not use the logo of the parent association in the text of any advertisement prepared or distributed by the service corporation or the brokerdealer or in the text of any advertisement for specific securities

products;

(C) Where the service corporation contracts with a third-party brokerdealer, has a written contract with the broker-dealer that provides that the broker-dealer agrees to indemnify fully the service corporation and the association for any liability arising from the negligence, recklessness, or intentional conduct of the broker-dealer or its employees, and that sets forth operating, marketing, compensation, and other relevant terms;

(D) Provides to the District Director or his or her designee an initial opinion of counsel or an opinion from the senior securities principal responsible for overseeing the subject brokerage program that the program has been established pursuant to operational procedures that are intended to ensure that the program is conducted in conformity with applicable securities laws and regulations and that such procedures include internal controls and supervisory systems that have been established and are to be applied to detect and prevent violations of federal securities statutes, the rules adopted thereunder, and the rules of selfregulatory organizations applicable to broker-dealers, including but not limited to those provisions designed to prevent churning, unsuitable recommendations, charging excessive prices, and the making of fraudulent representations in connection with the offer, sale, or purchase of securities ("the regulations"); and on an annual basis thereunder provides a certification by the senior securities principal responsible for supervising and overseeing the subject brokerage program that he or she has discharged the obligations incumbent upon him or her by reason of such procedures and systems previously described and has no reasonable belief or cause to believe that such procedures and systems have not been and are not being complied with or that a violation of the regulations has occurred;

(E) Does not condition the provision of securities services to a customer on the customer's utilizing services of any affiliate of the association, the service corporation, or a broker-dealer.

(ii) Service corporation activities authorized under this paragraph (c)(4)(ii) may not include the following activities:

(A) Execution of securities transactions on a principal basis, including market-making and

underwriting, except on a riskless principal basis, and except as permitted under paragraph (c)(3) of this section;

(B) Payment to any employee of the association of a referral fee, bonus, or any incentive compensation, in cash or in kind, for referring any customer to the service corporation except as may be consistent with a "no-action" letter received by the association from the U.S. Securities and Exchange Commission ("SEC"), stating that the SEC will not recommend enforcement section if association employees receive the planned referral fee but do not register with a broker-dealer and the association does not register as a broker-dealer;

(C) Solicitation of a person to execute a transaction in a specific security by any registered representative;

(D) Indemnification by the service corporation to a degree greater than the indemnification provided to it by the third-party broker-dealer; and the association is prohibited from indemnifying a third party broker-

(E) Extension of margin credit by the association to customers of the service corporation or broker-dealer;

(F) Entry into any third-party contract with a broker-dealer, directly by the association; and

(G) Non-registered representatives who are dual or sole employees of the association performing tasks other than clerical for ministerial tasks; prohibited activities include accepting or delivering money or securities and taking orders to execute securities transactions.

(iii) Any association that intends to acquire or establish a service corporation to engage in preapproved securities brokerage activities shall furnish to the District Director or his or her designee, no earlier than 180 days and no later than 30 days prior to the commencement of operations, written notice containing a full description of the brokerage services to be provided, together with copies of all executed contractual agreements and memoranda between the service corporation and broker-dealers, investment advisors, the parent savings association, and their affiliates, pro forma income statements for a three year period, any required professional opinions, and a reasoned legal opinion from counsel that the securities brokerage service qualify as preapproved under this paragraph (c)(4)(iii).

(iv) The District Director or his or her designee may request additional information at any time regarding the operations of the service corporation if he or she has supervisory concerns

about the activity, has evidence that the activity may not be in the best interest of the association or service corporation, or has questions as to whether the activities are being conducted in a manner that is preapproved.

(5) Other investments. (i) Making investments in securities and in corporations or partnerships authorized by title IX of the Housing and Urban

Development Act of 1968;

(ii) Investing in savings accounts in a savings association that is a stockholder of the service corporation: Provided, That the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;

(iii) Investing in the capital stock or in the accounts of an interim Federal savings association or an interim state savings association that has been chartered solely for the purpose of becoming a constituent in a merger that will result in the acquisition of a stock association by a savings and loan holding company or by a company which will, after the acquisition, be a savings and loan holding company:

(iv) Investing in tax-exempt bonds of state governments or political subdivisions thereof used to finance residential real property for family units and issued pursuant to section 103 of the Internal Revenue Code, and tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies and issued pursuent to section 11(b) of the United States Housing Act of 1937, as amended; and

(v) Investing in the capital of a small business investment company or minority enterprise small business investment company licensed pursuant to section 302(d) of the Small Business Investment Act of 1958 by the U.S. Small Business Administration to invest in small businesses engaged exclusively in the activities listed in paragraph (c)(1) through (c)(6) of this section;

(vi) Engaging in interest rate futures transactions subject to the provisions of \$ 563.174 of this chapter, but not subject to any notification requirements thereof;

(vii) Engaging in financial options trading subject to the provisions of \$ 563.175 of this chapter;

(viii) Making investments specified in \$\$ 545.71-73 and 545.76 and in 12 U.S.C. 1464(c)(1) (C) through (F), (M) and (N).

1464(c)(1) (C) through (F), (M) and (N).
(6) Other services. (i) Preparing state and Federal tax returns for individuals or organizations that are not corporations operated for profit;

(ii) Insurance brokerage or agency for liability, casualty, automobile, life, health, accident, or title insurance, but not private mortgage insurance; (iii) Providing fiduciary services upon application to the Office pursuant to § 550.2, and subject to the conditions provided in §§ 550.1 through 550.16 of this subchapter;

(iv) Issuing notes, bonds, debentures, or other obligations or securities;

(v) Issuing credit cards, extending credit in connection therewith, and otherwise engaging in or participating in credit card operations;

(vi) Acquiring personal property, including office equipment, for the purpose of leasing such property or obtaining an assignment of a lessor's interest in a lease of such property;

(vii) Providing data processing services to the extent permitted to the parent association pursuant to § 545.138

of this part;

(viii) Issuing letters of credit;

(ix) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985).

(7) Activities reasonably incident to those listed in paragraphs (c)(1) through

(c)(6) of this section.

(d) Amount of investment. (1) An association may invest under this section in the capital stock, obligations, or other securities of service corporations: Provided, That its aggregate outstanding investment does not exceed three percent of assets, and any investment in excess of two percent of assets serves primarily community, inner-city or community development purposes. The investment limitations of this paragraph (d)(1) shall include all loans (but not including accounts payable incurred in the ordinary course of business and paid within 60 days) secured and unsecured, and all guarantees or take-out commitments of such loans, to service corporations or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, whether or not the association is a stockholder therein. An association with an aggregate outstanding investment in excess of two percent of assets shall designate investments that serve primarily community, inner-city or community development purposes which shall include the following:

(i) Investments in governmentally insured, guaranteed, subsidized or otherwise sponsored programs for housing, small farms, or businesses that

are local in character;

(ii) Investments for the preservation or revitalization of either urban or rural communities:

(iii) Investments designed to meet the community development needs of, and primarily benefit, low- and moderate-income communities; or

(iv) Other community, inner-city or community development-related investments approved by the District Director.

(2) In addition to amounts which it may invest under paragraph (d)(1) of this section, an association that meets its applicable minimum regulatory capital requirement may lend additional

amounts as follows:

(i) An amount not to exceed regulatory capital may be invested in conforming loans and functionally equivalent leases made to each service corporation of which the association owns or holds with power to vote not more than ten percent of the capital stock and to each joint venture, in which a service corporation in which the association is a stockholder, including subsidiaries of such service corporation:

(A) Owns or holds with power to vote not more than a total of ten percent of

the capital stock, or

(B) Is a limited partner and has contributed not more than ten percent of

such joint venture's capital.

(ii) An aggregate outstanding amount not to exceed fifty percent of regulatory capital may be invested in conforming loans and functionally equivalent leases to all service corporations in which the association owns more than ten percent of the capital stock, and to all joint ventures in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations:

(A) Own or hold with power to vote more than a total of ten percent of the

capital stock, or

(B) Are partners.
(3) The limitation in paragraph (d)(1) of this section does not apply to conforming loans to any service corporation in which the lending association does not have any investment made under authority of this section, or to conforming loans to a statewide service corporation in which;

(i) All of the capital stock is available for purchase by, and only by, any and all savings associations with a home

office in such state;

(ii) No savings association owns, or may own, more than ten percent of the service corporation's outstanding capital stock, except that in any state in which the home offices of fewer than fifteen savings associations are located, no association owns, or may own, more than one-third of such stock;

(iii) Every eligible savings association may own an equal amount of capital stock or may, on such uniform basis as the service corporation may determine, own an amount of such stock equal to a stated percentage of its assets or savings capital at the time the stock is purchased, but capital stock outstanding on December 31, 1964, may be disregarded in determining compliance

with this requirement.

(e) Disposal of investment. Whenever a service corporation, including any subsidiary thereof, engages in an activity which is not permissible for, or exceeds limitations on, a service corporation in which a Federal savings association may invest, or whenever the capital stock ownership requirements of this section are not met, a Federal savings association having an interest in the service corporation, including any subsidiary thereof, shall dispose of its investment promptly unless, within 90 days after the Director mails written notice to the association, the impermissible activity is discontinued, the limitation is complied with, or the capital stock ownership requirements

(f) Delegation of authority. Unless an application of a Federal savings association filed pursuant to this section involves a significant issue of law or policy or would establish a precedent of national significance, the Senior Deputy Director for Supervision (Operations), with the concurrence of the Chief Counsel, or their respective designees, is

authorized:

(1) To approve the application, if it is complete and in compliance with regulatory requirements; and

(2) To deny the application if it does not satisfy the approval criteria. If the Senior Deputy Director for Supervision (Operations) or the Chief Counsel, or their respective designees, is of the opinion that the application involves considerations of law or policy that warrant resolution by the Director of the Office, the Senior Deputy Director for Supervision (Operations) shall submit the application to the Director for his or her determination and notify the applicant. If the Senior Deputy Director for Supervision (Operations) fails to obtain the concurrence of the Chief Counsel, or their designees, the Senior Deputy Director for Supervision (Operations) shall present the application to the Director for his or her

determination and notify the applicant.
(g) Appeals. Denial of an application by the Senior Deputy Director for Supervision (Operations) pursuant to paragraph (f) of this section may be appealed to the Director of the Office under the following procedure. Within 30 days after notification of the decision of the Senior Deputy Director for Supervision (Operations) as provided in this section, the applicant must file a written request for review with the

Director stating the applicant's desire to appeal the decision of the Senior Deputy Director for Supervision (Operations). The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the denial of the Senior Deputy Director for Supervision (Operations) is contended to be erroneous. Three copies of such request for review shall be submitted to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, Washington, D.C. 20552. One copy of such request should be addressed to the attention of the Senior Deputy Director for Supervision (Operations), and one copy to the attention of "the Chief Counsel, Corporate and Securities Division"; also, one copy shall be sent to the District Director. The Senior Deputy Director for Supervision (Operations) shall forward to the Director the record, or a copy thereof, used as a basis for the determination together with any other information believed by the Senior Deputy Director for Supervision (Operations) to be useful in reviewing the determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the Senior Deputy Director for Supervision (Operations) is waived. A timely filing of a request for review in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

#### § 545.75 Commercial paper and corporate debt securities.

(a) General. Pursuant to section 5(c)(2)(D) of the Act, a Federal savings association may invest in, sell, or hold commercial paper and corporate debt securities, including corporate debt securities convertible into stock, subject to the limitations set forth in paragraph (b) of this section.

(b) Limitations. (1) Commercial paper

must be:

(i) Denominated in dollars, and

(ii) As of the date of purchase, as shown by the most recently published rating made of such investments by at least two nationally recognized investment rating services, rated in either one of the two highest categories;

(iii) If unrated, guaranteed by a company having outstanding paper that is rated as provided in paragraph (b)(1)(ii) of this section.

(2) Corporate debt securities must be:

(i) Denominated in dollars,

(ii) Securities that may be sold with reasonable promptness at a price which corresponds reasonably to their fair value, and

- (iii) Rated in one of the four highest categories by a nationally recognized investment rating service at its most recent published rating before the date of purchase of the security.
- (3) A Federal savings association's total investment in the commercial paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, together with other commercial loans, shall not exceed the limitations contained in § 563.93(b)(2).
- (4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations:
- (i) The purchase of securities convertible into stock at the option of the issuer is prohibited;
- (ii) At the time of purchase, the cost of such securities must be written down to an amount which represents the investment value of the securities considered independently of the conversion feature;
- (iii) Federal savings associations are prohibited from exercising the conversion feature.
- (5) At any one time, the average maturity of a Federal savings association's portfolio of corporate debt securities may not exceed six years.
- (6) A Federal savings association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.
- (c) Notwithstanding the limitations contained in this section, the Office may permit investment in corporate debt securities of another savings association in connection with the purchase or sale of a branch office or in connection with a supervisory merger or acquisition.
- (d) Notwithstanding any rating and marketability limitations contained in paragraphs (b) (1) and (2) of this section, a Federal savings association may invest up to one percent of its assets in commercial paper and corporate debt securities not otherwise prohibited by section 28(d) of the Federal Deposit Insurance Act, as added by the Financial Institutions Reform, Recovery and Enforcement Act of 1989, if in the exercise of its prudent business judgment it determines that there is adequate evidence that the obligor will be able to perform all that it undertakes to perform in connection with such securities, including all debt service requirements.

## § 545.76 Investment in open-end management investment companies.

(a) Authorization. Pursuant to section 5(c)(1)(Q) of the Act, a Federal savings association may invest in, redeem, or hold shares or certificates in any openend management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and the portfolio of which is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to any such investments as an association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold or otherwise deal with.

(b) Limitations. Where the investments of the open-end management investment company consist of commercial paper and corporate debt securities, such investments must come within the limitations of § 545.75(b) (1) and (2) of this part. Five percent of assets shall be the maximum that may be invested in the shares of any one such company.

## § 545.77 Real estate for office and related facilities.

(a) General. A Federal savings association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the Federal savings association's present needs or its reasonable future needs for office and related facilities. The Federal savings association shall obtain Office approval before making an investment which would cause the outstanding aggregate book value of all such investments (including investments under § 545.74(c)(3)(viii) of this part) to exceed its regulatory capital. The Federal savings association shall also obtain Office approval before investing in real estate which the Office has not approved for the establishment or maintenance of an office facility, if the investment, together with the Federal savings association's other investments in real estate lacking such approval, would exceed 25 percent of its regulatory capital.

(b) Requests for Office approval of exceptions. A Federal savings association shall send requests for Office approval of exceptions to limitations in this section to the District Director, with a copy to the Senior Deputy Director for Supervision (Operations).

#### § 545.78 Lessing.

(a) Authorization. Pursuant to section 5(c)(2)(C) of the Act, a Federal savings association may invest in tengible personal property for the purpose of leasing that property, subject to the limitations of this section.

(b) Residual value. The estimated residual value of the property at the expiration of the initial term of the lease shall not exceed 70 percent of the acquisition cost to the lessor.

#### § 545.79 Gold transactions.

No Federal savings association shall engage in any transaction or activity, including the payment of interest or dividends, involving gold (including gold coin) or gold related instruments or securities or pay interest or dividends in an amount of money determined in any manner related to gold: *Provided*, That Federal savings associations may purchase, sell, and pay interest or dividends in gold coins minted and issued by the United States Treasury.

## § 545.80 Small Business Investment Corporations.

Pursuant to section 5(c)(4)(D) of the Act, a Federal savings association may invest in small business investment companies formed pursuant to section 301(d) of the Small Business Investment Company Act of 1958.

#### §§ 545.81 [Reserved]

#### § 545.82 Finance subsidiaries.

(a) Definitions. As used in this section:

 Assets collateralizing means any assets of a finance subsidiary securing, pledged to, or committed to a securities issuance by a finance subsidiary.

(2)(i) Assets transferred or "transferring assets" means assets of or liabilities issued by a parent Federal savings association that are transferred or made available by such Federal savings association to a finance subsidiary. Assets transferred include guarantees of a finance subsidiary's securities issuances by its parent Federal savings association.

(ii) For the purpose of calculating the 30 percent aggregate and 250 percent per-issuance transfer limitations set forth in paragraphs (c)(1)(i) and (c)(1)(ii), respectively, of this section, assets transferred by a Federal savings association to a finance subsidiary include—

(A) Assets or liabilities used to capitalize a finance subsidiary, to collateralize an issuance of securities by an established finance subsidiary, or to maintain collateral levels for any security issued by a finance subsidiary;

(B) Any guarantee issued by a parent Federal savings association with respect to the securities issued by a finance subsidiary or any collateral for such guarantee as provided in paragraph (c)(4) of this section;

(C) Any portion of the proceeds of a securities issuance by a finance subsidiary held by a finance subsidiary for collateral maintenance, fee payment, or other necessary expenses related to the securities issuance or collateralizing assets; and

(D) Any assets or liabilities received by a finence subsidiary from its parent Federal savings association by or after remitting to the parent Federal savings association the proceeds of a securities issuance by such finance subsidiary. The remittance of proceeds of a securities issuance to a parent Federal savings association by any method, including those set out in paragraph (e) of this section, shall not decrease the amount of assets transferred for the purposes of paragraph (c)(1)(i) or (c)(1)(ii) of this section.

(3) "Finance subsidiary" means a Federal savings association's subsidiary subject to the provisions of this section whose sole purpose is to issue securities (as defined in § 561.44 of this chapter) that the Federal savings association is authorized to issue directly (or, if the parent Federal savings association is a mutual savings association, would be authorized to issue if it converted to the stock form) and to remit the net proceeds of such securities issuances to its parent Federal savings association.

(b) Establishment of finance subsidiaries. A Federal savings association may establish one or more finance subsidiaries as defined in paragraph (a)(3) of this section. Prior to the establishment of any finance subsidiary, the board of directors of a Federal savings association shall, by resolution, vote to authorize the creation of a finance subsidiary in furtherance of a written business plan to reduce interest-rate risk and to control credit risk, and shall agree to make the books and records of its finance subsidiary available to the Office. The Federal savings association shall notify the Office and the Federal Deposit Insurance Corporation not less than 30 days before the commencement of the activities of the finance subsidiary. The board of directors of a Federal savings association shall be responsible for monitoring the use of all proceeds obtained through the issuance of securities by the finance subsidiary and shall ensure compliance with the business plan pursuant to which the finance subsidiary was established.

(c) Transactions between a parent Federal savings association and its finance subsidiaries. (1) A Federal savings association may provide the capital to establish one or more finance subsidiaries by transferring assets to such a finance subsidiary: Provided,

(i) The aggregate current book value of all assets transferred by a Federal savings association to a finance subsidiary shall not, without the prior written approval of the District Director of the parent Federal savings association exceed 30 percent of the current book value of the Federal savings association's total assets determined as of the date of any transfer of assets; and

(ii) The aggregate current market value of all assets transferred shall not, without the prior written approval of the Federal savings association's District Director exceed the amount necessary and customary for the issuance of the type of securities to be issued by a finance subsidiary (which may be the amount required by the rating criteria of a nationally recognized investment rating service) or 250 percent of the gross proceeds of a finance subsidiary's securities issuance, whichever is less.

(2) A finance subsidiary shall not be consolidated with its parent Federal savings association for purposes of calculating the regulatory capital requirement of the parent Federal savings association pursuant to § 567.2 of this chapter, but the parent Federal savings association shall be subject to the requirements of § 563.132 of this

(3) A Federal savings association may guarantee any securities issued by its finance subsidiary: Provided, That the guarantee shall not exceed the sum of the unpaid principal balance, any accrued but unpaid interest, any redemption premium, and any postdefault interest on such securities, and Provided further, That the guarantee shall provide that the assets collateralizing the payment of such securities of the finance subsidiary shall be exhausted before recourse may be had to the guarantee.

(4) If a guarantee of a finance subsidiary's securities by its parent Federal savings association is collateralized or if a liability issued by a parent Federal savings association to its finance subsidiary is collateralized, then the greater of the face amount of such guarantee or liability or the current book value of the collateral shall be included in the total amount of assets transferred by a parent Federal savings association under the limitation of paragraph (c)(1)(i) of this section. The greater of the

face amount of such guarantee or liability or the market value of the collateral shall be included in the total amount that may be transferred by a parent Federal savings association under the limitation of paragraph (c)(1)(ii) of this section.

(5) The amount of assets transferred (as defined in paragraph (a)(2) of this section) by a Federal savings association to a finance subsidiary shall not be subject to the loans-to-oneborrower limitations imposed by

§ 563.93 of this chapter.

d) Issuance of securities by finance subsidiaries. (1) A finance subsidiary of a Federal savings association may issue, either directly or through a third-party intermediary, any security that its parent Federal savings association is authorized to issue (or, if the parent Federal savings association is a mutual savings association, would be authorized to issue if it converted to the stock form), subject to the provisions of this section.

(2) A finance subsidiary shall not issue or deal in the deposits or savings accounts of its parent Federal savings association, or state or imply that securities issued by it are insured by the Federal Deposit Insurance Corporation.

(3) A finance subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that its parent Federal savings association is insolvent or has been placed into

receivership.

(4)(i) A Federal savings association providing capital to a finance subsidiary shall own 100 percent of the finance subsidiary's outstanding voting common stock. A Federal savings association shall not transfer or otherwise assign any interest in its finance subsidiary's common stock to any other person or entity without the prior written approval of the Office.

(ii) A finance subsidiary may provide for voting rights for holders of preferred stock in the manner, for the time period, and to the extent customary to protect the rights of such preferred stockholders: Provided, That upon the expiration of any event giving rise to the exercise of such voting rights, such rights shall be vested exclusively as provided in paragraph (d)(4)(i) of this section. Such events include, without limitation, the following:

(A) The finance subsidiary fails to pay dividends for at least one dividend

(B) Authorization is sought for any merger, consolidation, or reorganization of the finance subsidiary or its parent Federal savings association (except in a supervisory case) in which the issuing

finance subsidiary or its parent Federal savings association is not the survivor and the regulatory capital of the resulting finance subsidiary or parent Federal savings association available for payment of any class of preferred stock is less than the regulatory capital available for such class prior to the merger, consolidation, or reorganization;

(C) Authorization is sought to create a class of preferred stock having a preference or priority over an outstanding class or classes of preferred

stock;

(D) Authorization is sought for any action that would adversely change the specific terms of a class of preferred

(E) Authorization is sought to increase the number of shares of a class of

preferred stock; and

(F) Authorization is sought for the issuance of an additional class or classes of preferred stock without the finance subsidiary having met specified financial standards.

(e) Transfer of proceeds of the issuance of securities. All proceeds from the issuance of any security by a finance subsidiary, net of the reasonable costs (including any proceeds held in the subsidiary for collateral maintenance, fee payment, or any other necessary expenses related to the finance subsidiary's securities issuances or collateralizing assets) associated with the issuance of securities by the finance subsidiary and the organization of the finance subsidiary, shall be remitted to the finance subsidiary's parent Federal savings association. Such remittance may be made by the payment of dividends on the common stock issued by the finance subsidiary to its parent; by a redemption of the common stock issued by the finance subsidiary to its parent Federal savings association; by the repayment of any loan made by the parent to the finance subsidiary as part of the capitalization of the subsidiary; or by the purchase of assets of, or liabilities issued by, the parent Federal savings association (subject to the limitations of paragraph (c)(1) of this section on the aggregate and perissuance transfers by a parent Federal savings association to a finance subsidiary): Provided, That any capital stock (common or preferred), mutual capital certificate, subordinated debt, or any other security that would otherwise be considered to be regulatory capital as defined in § 567.1 of this chapter shall not, if issued by the parent Federal savings association to its finance subsidiary, be included in the parent Federal savings association's regulatory capital unless:

(1) No assets of the parent Federal savings association have been transferred to the finance subsidiary,

(2) The transaction transfers the risk of equity ownership to parties other than that finance subsidiary or any savings association, and

(3) The Office approves the

transaction.

The remittance of proceeds to a parent savings association by any method shall not reduce the amount of assets transferred to a finance subsidiary for purposes of the transfer limitations of paragraph (c)(1) of this section. If a Federal savings association on December 31, 1985, has exceeded the transfer limitations of paragraph (c)(1)(i) or (c)(1)(ii) of this section due to deducting from the amount of the Federal savings association's assets transferred any amount of remitted proceeds from a finance subsidiary's securities issuances, the Federal savings association shall not make additional transfers (unless necessary for collateral maintenance) until the Federal savings association is in compliance with such transfer limitations.

(f) Notification to the District
Director. (1) Prior to the establishment
of any finance subsidiary, the transfer of
any additional assets to an existing
finance subsidiary, or the issuance of
any additional securities by an existing
finance subsidiary, the board of
directors of the parent Federal savings
association, or a duly authorized
executive committee thereof, shall
submit written notification to the
Federal savings association's District

Director specifying:

(i) The name of the finance subsidiary;(ii) The jurisdiction of incorporation of

the finance subsidiary;

(iii) The amount of assets of the parent Federal savings association to be transferred (including the terms of any guarantee to be issued by the Federal savings association or any affiliate of the Federal savings association); the current book value of all such assets previously transferred to the finance subsidiary; and the amount representing 30 percent of the current book value of the parent Federal savings association's total assets; and

(iv) When known and to the extent permitted by the Securities Act of 1933:

 (A) A description of the securities to be issued by the finance subsidiary, including the term thereof;

(B) The aggregate amount of the securities issuance; the anticipated amount of gross proceeds of the securities issuance; and the current market value of assets collateralizing the securities issuance; (C) The anticipated interest or dividend rates and yields, or the range thereof, and the frequency of payments on the finance subsidiary's securities;

(D) The minimum denomination of the finance subsidiary's securities; and

(E) Where the finance subsidiary intends to market the securities.

(2) Within 10 days after the issuance of any securities through a finance subsidiary, its parent Federal savings association shall send written notification and a copy of any prospectus, offering circular, or other similar document concerning such an issuance of securities to its District Director.

(3)(i) Any Federal savings association that fails to meet its regulatory capital requirement, as provided in § 567.2 of this chapter, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through an existing finance subsidiary without the prior written approval of the Federal savings association's District Director. To obtain the written approval of the District Director, the board of directors of the Federal savings association, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (f)(1) of this section, as well as any additional information required by the District Director.

(ii) Within 10 days of the filing of an application specifically designated as filed pursuant to paragraph (f)(3)(i) of this section or any additional information by a Federal savings association subject to paragraph (f)(3)(i) of this section, the District Director shall notify the applicant in writing either that all information required has been filed or that additional specified information must be filed. If the District Director does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be

approved.

(iii) The District Director shall approve the application of a Federal savings association, subject to the requirements of paragraph (f)(3)(i) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of additional securities by an existing finance subsidiary is likely to affect adversely the financial condition or the safe and sound operation of the parent Federal savings association. An adverse determination made by the District Director may be challenged by filing, within 30 days of receipt of

written disapproval, a petition for reconsideration with the Office. The Federal savings association shall file its petition with the Secretary to the Office and shall send a copy to the District Director. The Office shall grant or deny a petition for reconsideration filed pursuant to paragraph (f)(3)(iii) of this section in writing within 30 days of receipt. If the Office does not deny such a petition for reconsideration within the prescribed time, the Office shall be deemed to have granted the petition for reconsideration.

(g) Examination of finance subsidiaries. A finance subsidiary shall agree in writing to permit and to facilitate examinations and to pay any Federal savings association costs of such examinations as the Office may deem necessary or appropriate.

#### §§ 545.83-545.90 [Reserved]

#### § 545.91 Home office.

All operations of a Federal savings association shall be subject to direction from the home office.

#### § 545.92 Branch offices.

(a) General. A branch office of a
Federal savings association is any office
other than its home office, agency office,
data processing or administrative office,
or a remote service unit. Except as
limited by this section, any business of a
Federal savings association may be
transacted at a branch office. A Federal
savings association shall not establish a
branch office without prior written
approval of the Office.

(b) Eligibility. A Federal savings association may apply for a branch regardless of the number of branch applications it has pending before the Office, unless otherwise currently restricted under an agreement between the Office and a state agency that regulates state-chartered savings

associations.

(c) Application form; filing; completion; supervisory objection. Applicants shall obtain Office approved application and notice forms and related instructions from the District Director or his or her designee. An application is filed when four copies are delivered to the District Director or his or her designee; the application is complete when the District Director or his or her designee determines that all required information has been submitted. The Office shall not accept an application if in its opinion the association is not eligible or its policies, condition, or operations afford a basis for supervisory objection. The District Director or his or her designee shall determine that the application is complete, the applicant is

giving direction for publication of notice.

(d) Processing of application.

Processing of an application under this part shall follow the procedures set forth in § 543.2 (c), (d), (e), and (f) of this subchapter except that the applicant shall publish the required newspaper notice of application in the applicant's home office community and in the community to be served by the proposed

branch office.

(e) Approval by the Director or the District Director. (1) The Director shall approve an application only if, in his or her opinion, the overall policies, condition, and operation of the applicant afford no basis for supervisory objection and the proposed branch will open within twelve months of approval unless otherwise allowed by the Director or the District Director. In considering whether to approve an application, the Director will assess and take into account an association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, pursuant to Part 563e of this chapter; assessment of an association's record of performance may be the basis for denying an application. An application may also be denied on the basis of restrictions imposed pursuant to an existing agreement between the Office and a state agency that regulates state-chartered savings associations.

(2) The District Director may approve, on behalf of the Director, an application for permission to establish a branch office if no substantial protest based on Part 563e of this chapter has been filed. Such application shall be deemed to be approved 30 days after notification that the application is complete, unless the applicant is notified by the District Director that objection has been taken on grounds set forth in paragraph (e)(1)

of this section.

(f) Approval of temporary or permanent location. The District Director or his or her designee may approve a temporary and/or permanent location of an approved branch office if the new location is in the immediate vicinity of the approved location.

(g) Offices not requiring prior written approval. A Federal savings association may establish without prior approval a drive-in and/or pedestrian office opened in conjunction with an approved branch or home office of the association, located within 500 feet of a public entrance of that office and closer to that entrance than to a public entrance of any other SAIF-insured association, and the functions of which are limited to the

ordinary functions performed at a tellerwindow.

(h) Maintenance of branch office after conversion, consolidation, purchase of bulk assets, merger or purchase from receiver. (1) An existing association which converts to a Federal savings association may maintain an existing office, and a Federal savings association which acquires offices through consolidation, purchase of bulk assets, merger or purchase from the receiver of an association may maintain any acquired office, except to the extent the written approval of the Office of the conversion, consolidation, merger, or purchase specifies otherwise.

(2) A Federal savings association may not file a branch application after having filed an application to merge or otherwise surrender its Federal charter, unless the merger or conversion application has been pending for at least

six months.

(3) The Director may deny a branch application if he or she determines that the applicant will not in fact operate such branch as an office of a Federal

savings association.

(i) Exclusive agreements prohibited. A Federal savings association may not enter into any kind of agreement(s) that would result in the exclusive right to operate a branch office in a regional shopping center, as defined in \$ 571.11(b) of this chapter, or in a majority of all locations of a chain store, or enter into an agreement under which other financial institutions would be excluded from operating offices in a regional shopping center or any location of a chain store where the Federal savings association does not have an office.

## § 545.93 Upgrading of approved branch office.

(a) General. A branch office is upgraded if the association is relieved of any of the restrictions imposed on operation of the office when it opened.

(b) Notice. A Federal savings association operating a limited, mobile, or satellite facility approved before January 1, 1981, or a branch office with conditions imposed on its operation shall notify the District Director or his or her designed at least 30 days before

upgrading the facility.

(c) Approval. If, within 30 days of receipt of the notice, the District Director or his or her designee does not notify the association of supervisory objection which would require the association to submit an application or additional information before upgrading, the association may upgrade the facility.

(d) Upgrading with change of location. Any upgrading which involves a permanent change of location must be approved under § 545.95 of this part.

#### § 545.94 Closing a branch office.

A Federal savings association shall notify the District Director or his or her designee not less than 60 days or, in the case of an emergency, as early as circumstances permit, before closing a branch office.

## § 545.95 Change of office location and redesignation of offices.

(a) General. A Federal savings association shall not change the permanent location of its home office or any approved branch office, or redesignate a home or branch office, without prior approval of the Director or the District Director or his or her designee.

(b) Processing of application. (1)
Processing of an application for a
change of office location or
redesignation of a home or branch office
shall follow the procedures set forth in
§ 545.92 (c), (d), (e), (f), (g), (h), and (i) of

this part, except that:

(i) The applicant shall publish the required newspaper notice of application in the applicant's home office community, the community to be served by the new office, and the community where the office is to be closed or the home office is to be redesignated as a branch; and

(ii) The applicant shall post notice of the application for seventeen days from the date of first publication in a prominent location in the office to be

closed or redesignated.

(2) The District Director may approve, on behalf of the Director, an amendment to an association's charter in connection with approval of a home office relocation or redesignation under this section.

(c) Short-distance relocations. (1) Notwithstanding paragraph (a) of this section, an association may change the permanent location of a home or branch office, without applying for approval by the Office, to a site within the market area and short-distance relocation area of the office site that has been approved in accordance with § 545.92 of this part or paragraph (a) of this section. The short-distance relocation area of an office site is:

(i) The area within a 1,000-foot radius of the site if it is located within a central city of a Standard Metropolitan Statistical Area ("SMSA") designated by the U.S. Department of Commerce;

(ii) The area within a one-mile radius of the site if it is located within an SMSA designated by the U.S. Department of Commerce but not within a central city; or

(iii) The area within a two-mile radius of the site if it is not located within an SMSA.

(2) An association shall notify the District Director or his or her designee in writing at least 30 days before such an office relocation and may proceed with the relocation unless, within 30 days of receipt of the notice, the District Director or his or her designee notifies the association that the relocation does not satisfy the criteria in the first sentence of this paragraph (c), in which case the association must file an application and obtain approval by the Office in accordance with paragraph (b) of this section.

#### § 545.96 Agency.

(a) General. A Federal savings association may, without approval of the Office, to the extent authorized by its board of directors, establish or maintain, within the same state as the home office of the Federal savings association or the same state as any branch office approved by the Office, agencies which only service and originate (but do not approve) loans and contracts and/or manage or sell real estate owned by the Federal savings association.

(b) Additional services. Except for payment on savings accounts and loan approval services, offering of any services not listed in paragraph (a) of this section may be approved by the

District Director.

(c) Records. An agency shall maintain records of all business it transacts and transmit copies to a branch or home office of the Federal savings association.

(d) Notice. A Federal savings association shall notify the District Director when it opens or closes an agency.

#### §§ 545.97-545.100 [Reserved]

### § 545.101 Fiscal agency.

A Federal savings association designated fiscal agent by the Secretary of the Treasury or with Office approval by another instrumentality of the United States, shall, as such, perform such reasonable duties and exercise only such powers and privileges as the Secretary of the Treasury or such instrumentality may prescribe.

### § 545.102 Trustee.

(a) A Federal savings association may act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954; as trustee or custodian of an Individual Retirement Account within

the meaning of section 408(a) of the Internal Revenue Code; or as trustee with no active fiduciary duties if state law authorizes a savings association to act in such capacity: Provided, that the Federal savings association shall invest the funds of the trust or account only in the Federal savings association's own accounts, deposits, obligations, or securities or, upon the condition that the Federal savings association does not exercise any investment discretion or directly, or indirectly provide any investment advice with respect to the trust or account assets, in such other assets as the customer may direct. The Federal savings association shall observe principles of sound trust administration, including those relating to recordkeeping and segregation of assets, and may receive reasonable compensation for acting in any trust capacity authorized by this section.

(b) Unless trust investments are limited to accounts or deposits insured by the Federal Deposit Insurance Corporation, a Federal savings association acting as trustee or custodian pursuant to paragraph (a) of this section shall include in bold type on the first page of any contract documents

the following language:

Funds invested pursuant to this agreement are not insured by the Federal Deposit Insurance Corporation ("FDIC") merely because the trustee or custodian is a Federal savings association the accounts of which are covered by such insurance. Only investments in the accounts of such a Federal savings association are insured by the FDIC, subject to its rules and regulations.

#### § 545.103 Suretyship.

Pursuant to the authority given to the Office under section 5(b)(2) of the Act, a Federal savings association is authorized to enter into an agreement to act as surety subject to the following provisions:

(a) A savings association may enter into a suretyship agreement only if performance under the agreement would create an obligation authorized for investment by a savings association. A savings association's obligation under the suretyship agreement will be treated as a loan to its principal for purposes of the requirements of §§ 563.93 and 563.43

of this chapter.

(b) A savings association must take and maintain a security interest in real estate or marketable securities of its principal having a market value of at least 110 percent of the savings association's suretyship obligation. If real estate, the value must be established by a signed appraisal by an appraiser approved by the savings association's management (as that term

is defined in § 563.171 of this chapter). In determining compliance with the 110 percent requirement, the savings association must consider the value of prior mortgages, liens or other encumbrances on the property, except those held by the party for whose protection the suretyship agreement is made. If marketable securities, such securities must be of a type in which the savings association is authorized to invest, and the savings association must provide for maintenance of the security at the required level during the term of the suretyship agreement.

(c) To the extent a savings association is required to meet its obligation under a suretyship agreement, the amount expended shall be treated as an extension of credit subject to percentage-of-assets limits in accordance with the obligation thereby created to the savings association.

## §§ 545.104-545.110 [Reserved]

## § 545.111 Adjustments to book value of assets.

If the District Director determines that an asset's stated book value exceeds its value or that documentation in the Federal savings association's loan file is inadequate to demonstrate that an investment made under 12 U.S.C. 1464(c)(3)(C)-(D) is sound, it may require the Federal savings association to charge off the asset immediately or establish and maintain a special reserve(s) equaling the overvaluation.

#### § 545.112 [Reserved]

### § 545.113 Accounting records.

(a) Accounting practices. Each
Federal savings association shall use
such forms and follow such accounting
practices as the Office may require, and
shall close its books at least annually as
of the end of such month(s) as the
Federal savings association's board of
directors may designate. The date of the
Federal savings association's annual
closing shall be not less than fifteen
days or more than three months and
fifteen days before its annual meeting.

(b) Maintenance of records. A Federal savings association shall maintain a complete record of its business transactions and maintain at its home office, or at a branch or service office located within 100 miles of the home office, all general accounting records, including control records, of its business transactions. The Federal savings association may not transfer the general accounting or control records or the maintenance thereof from any of its offices to another, unless its board of directors has:

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(1) By resolution authorized the transfer or maintenance and

(2) Sent a certified copy of the resolution to the District Director of its

A Federal savings association that determines to maintain any of its records by means of data processing services shall so notify the District Director, in writing, at least 90 days before such maintenance will begin. Notification shall include identification of the records and the location at which they will be maintained. Any contract, agreement, or arrangement under which data processing services are to be performed shall expressly provide that the records maintained by such services shall at all times be available for examination and audit.

#### § 545.114 Monthly reports.

A Federal savings association's officers shall make a monthly report to the association's board of directors on forms prescribed by the Office and available from any District Director. The association shall send two copies of the report to the Office.

### § 545.115 Statement of condition.

(a) General. Each Federal savings association, within thirty days after the end of its fiscal year, shall:

(1) Publish a statement of condition in any English language newspaper of general circulation in the county in which the association's home office is located, and

(2) Make available for public inspection at its home office and each branch office a copy of such statement of condition.

A statement of condition is a formal statement of a Federal savings association's assets, liabilities, and regulatory capital as of the end of its

most recent fiscal year. (b) Format. The information set forth in a Statement of Condition shall be presented in accordance with generally accepted accounting principles and shall include a full and fair disclosure of the reconciliation of equity capital, as determined in accordance with generally accepted accounting principles, with regulatory capital, as defined in § 567.1 of this chapter. Each statement of condition shall include in bold type in the body of the statement the following language: "The SAIF, an agency of the United States Government, insures all depositors up to \$100,000 in accordance with the rules and regulations of the FDIC." In addition, the footnote reconciliation of equity capital to regulatory capital contained in such statements shall include the following language:

"Regulatory capital is the basis by which the Office of Thrift Supervision determines whether a savings association is insolvent and whether a savings association is meeting its regulatory capital requirement."

(c) Exemptions. The requirements of this section shall not apply to a Federal savings association:

(1) If, with respect to the same fiscal year that would be the subject of the statement of condition, the Federal savings association transmits an annual report to each of its voting members (or shareholders) pursuant to § 563.45 of this chapter; or

(2) In the case of a stock-chartered Federal savings association, if the equity securities of the Federal savings association are registered under section 12 of the Securities Exchange Act of

## §§ 545.116-545.120 [Reserved]

### § 545.121 Indemnification of directors, officers and employees.

A Federal savings association shall indemnify its directors, officers, and employees in accordance with the following requirements:

(a) Definitions and rules of construction. (1) Definitions for purposes of this section.

(i) Action. The term "action" means any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) Court. The term "court" includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought.

(iii) Final judgment. The term "final judgment" means a judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken.

(iv) Settlement. The term "settlement" includes entry of a judgment by consent or confession or a plea of guilty or nolo contendere.

(2) References in this section to any individual or other person, including any association, shall include legal representatives, successors, and assigns thereof.

(b) General. Subject to paragraphs (c) and (g) of this section, a savings association shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the association, for:

(1) Any amount for which that person becomes liable under a judgment if such action; and

(2) Reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his or her rights under this section if he or she attains a favorable judgment in such enforcement action.

(c) Requirements. Indemnification shall be made to such period under paragraph (b) of this section only if:

(1) Final judgment on the merits is in his or her favor; or

(2) In case of:

(i) Settlement.

(ii) Final judgment against him or her,

(iii) Final judgment in his or her favor. other than on the merits, if a majority of the disinterested directors of the savings association determine that he or she was acting in good faith within the scope of his or her employment or authority as he or she could reasonably have perceived it under the circumstances and for a purpose he or she could reasonably have believed under the circumstances was in the best interests of the savings association or its members.

However, no indemnification shall be made unless the association gives the Office at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the District Director, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Director of the Office advises the association in writing, within such notice period, of his or her objection thereto.

(d) Insurance. A savings association may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no savings association may obtain insurance which provides for payment of losses of any person incurred as a consequence of his or her willful or criminal misconduct.

(e) Payment of expenses. If a majority of the directors of a savings association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs

and expenses, including reasonable attorneys' fees, arising from the defense or settlement of such action. Nothing in this paragraph (e) shall prevent the directors of a savings association from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the savings association. Before making advance payment of expenses under this paragraph (e), the savings association shall obtain an agreement that the savings association will be repaid it the person on whose behalf payment is made is later determined not to be entitled to such indemnification.

(f) Exclusiveness of provisions. No savings association shall indemnify any person referred to in paragraph (b) of this section or obtain insurance referred to in paragraph (d) of the section other than in accordance with this section. However, an association which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section.

(g) The indemnification provided for in paragraph (b) of this section is subject to and qualified by 12 U.S.C. 1821(n).

#### § 545.122 Employment contracts.

A Federal savings association, upon specific approval of its board of directors, may enter into employment contracts with its officers and other employees in accordance with § 563.39 of this chapter.

## § 545.123 Advisory boards and committees.

A Federal savings association's board of directors may establish one or more advisory boards of directors or advisory committees to advise the association as the board of directors may authorize. Each member of such a board or committee shall be appointed by the board of directors on a year-to-year basis. Such members may be permitted to attend meetings of the board of directors, but they shall have no vote on matters acted upon by the board of directors.

#### §§ 545.124-545.125 [Reserved]

### § 545.126 Referral of insurance business.

(a) For purposes of this section the terms "owned" and "referral" have the meanings prescribed in § 556.16(a) (1) and (3) of this Subchapter.

(b) No Federal savings association shall refer any insurance business to an agency owned by officers or directors of the association, or by persons having power to direct its management, unless: (1) A specific state statute or regulation precludes Federal savings associations' service corporations (or wholly owned subsidiaries thereof) from engaging in the insurance business;

(2) The association, after filing any necessary applications and making a bona fide attempt to obtain any necessary approval (with or without instituting legal proceedings against state officials to compel approval) has been denied permission by the appropriate state licensing or regulatory authorities for its service corporation, or a wholly owned subsidiary thereof, to engage in the insurance business;

(3) Such state authorities follow an established and well-known policy of refusing to accept or approve such applications. (The association need not demonstrate existence of such a policy by instituting legal proceedings against such authorities to compel approval);

(4) The referral takes place within a reasonable period of time (not exceeding 18 months) after a change in such state law, regulation, or policy for the association to investigate the feasibility and desirability of acquiring or establishing its own service corporation insurance business; or

(5) An application for permission to establish or acquire a service corporation insurance business is on file with the appropriate state agencies and/or the Office.

#### §§ 545.127-545.130 [Reserved]

# § 545.131 Communication between members of a Federal mutual savings association.

(a) Right of communication with other members. A member of a Federal mutual savings association has the right to communicate, as prescribed in paragraph (b) of this section, with other members of the Federal savings association regarding any matter related to the Federal savings association's affairs, except for "improper" communications, as defined in paragraph (c) of this section. The association may not defeat that right by redeeming a savings member's savings account in the Federal mutual savings association.

(b) Member communication procedures. If a member of a Federal mutual savings association desires to communicate with other members, the following procedures shall be followed:

 The member shall give the Federal mutual savings association a written request to communicate;

(2) If the proposed communication is in connection with a meeting of the Federal savings association's members, the request shall be given at least thirty

days before the annual meeting or 10 days before a special meeting;

(3) The request shall contain—

(i) The member's full name and address;

(ii) The nature and extent of the member's interest in the Federal savings association at the time the information is given;

(iii) A copy of the proposed communication; and

(iv) If the communication is in connection with a meeting of the members, the date of the meeting;

(4) The Federal savings association shall reply to the request within either—

(i) Fourteen days;

(ii) Ten days, if the communication is in connection with the annual meeting;

(iii) Three days, if the communication is in connection with a special meeting;

(5) The reply shall provide either—
(i) The number of the Federal savings

association's members and the estimated reasonable cost to the Federal savings association of mailing to them the proposed communication; or

(ii) Notification that the Federal savings association has determined not to mail the communication because it is "improper", as defined in paragraph (c)

of this section;

- (6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the Federal savings association shall mail the communication to all members, by a class of mail specified by the requesting member, either—
  - (i) Within fourteen days:

(ii) Within seven days, if the communication is in connection with the annual meeting;

(iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or

(iv) On a later date specified by the member;

(7) If the Federal savings association refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the District Director two copies each of the requesting member's materials, the Federal savings association's written statement, and any other relevant material. The materials shall be sent within:

(i) Fourteen days,

(ii) Ten days if the communication is in connection with the annual meeting, or

(iii) Three days, if the communication is in connection with a special meeting,

after the Federal savings association receives the request for communication.

(c) Improper communication. A communication is an "improper communication" if it contains material

(1) At the time and in the light of the circumstances under which it is made:

(i) Is false or misleading with respect

to any material fact or

(ii) Omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading;

(2) Relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by

or on behalf of any party;

(3) Relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the Federal savings association or is not within the control of the Federal savings association; or

(4) Directly or indirectly and without

expressed factual foundation: (i) Impugns character, integrity, or personal reputation,

(ii) Makes charges concerning improper, illegal, or immoral conduct, or

(iii) Makes statements impugning the stability and soundness of the Federal savings association.

#### § 545.132 Disclosure of customer records.

(a) Definitions. For purpose of this

(1) The term "Agent" means any person authorized to transact business for a principal, as defined by the laws of the appropriate jurisdiction.

(2) The term "Customer" means a depositor in, borrower from, and any other person patronizing a Federal savings association and utilizing its

services.

(3) The term "Customer identification" means the original or any copy or summary of any document, including any evidence of a transaction conducted by electronic termina1, that contains the name and/or address of any customer of a Federal savings association, or any data from which such information could

be constructed.
(4) The term "Customer information" means the original or any copy or summary of any document, including any evidence of a transaction conducted by means of an electronic terminal, that contains a customer's customer identification and any information concerning a customer's individual savings or loan accounts or the details of other types of transactions between the customer and the association, or any

data from which such information could be constructed.

(5) The term "Financial institution" means any office of a bank, savings bank, savings association, industrial loan company, trust company, savings and loan, building and loan, or homestead association (including cooperative banks), credit union, or consumer finance institution, located in any state or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(6) The term "Person" includes an individual, partnership, corporation, association, trust, or any other legal entity organized under the laws of any state or of the United States, or of any

foreign state.

(7) The term "Public record" means a written document that is filed and recorded in the official public records of a governmental unit and which is available for public inspection.

(8) The term "Service corporation" has the meaning provided in § 545.74 of this Part and includes its wholly-owned

subsidiaries.

(9) The term "Third person" means a person other than the customer, the Federal savings association, or its wholly-owned service corporation, to whom disclosure is restricted by this

regulation.

- (b) Right to obtain and inspect customer's own customer information. A customer of a Federal savings association or his duly authorized agent has the right to obtain and inspect customer information pertaining solely to the customer's own savings account(s) or loan account(s) records, or information pertaining to other financial transactions with the association. A customer does not have the right under this section to obtain internal business papers, memoranda, or other confidential correspondence or communications between the association and others including its attorneys, accountants, and board of directors that may relate to the customer.
- (c) Disclosure of customer identification and customer information. (1) A Federal savings association may disclose a customer's customer information to:

(i) A wholly-owned service corporation of the Federal savings

association, cr

(ii) To third persons if the customer information intended to be released is limited to information recorded in the public records and/or a customer's customer identification, provided that in either case the Federal savings association has given written notice to

the customer of the intent of the rederal savings association to release such information, and that the customer has the right to prohibit the release of this information by notifying the association in writing of his or her objection, or

(iii) To third persons if the customer information to be disclosed is customer information not contained in a public record provided that the Federal savings association has complied with paragraph (f) of this section.

(2) Any disclosure pursuant to paragraphs (c)(1)(i) and (c)(1)(ii) of this section may be made no sooner than fifteen (15) days after the customer received the notice, if the notice was given in person, or fifteen days after the notice was mailed to the customer, and shall be limited to those customers of the Federal savings association who have not objected to the release of his or her customer information pursuant to those provisions.

(3) At least once every two years after a Federal savings association releases a customer's customer information pursuant to paragraph (c)(1) of this section, a Federal savings association that desires to continue to release customer information shall provide written notice to such customers reminding them that the association may release such customer information and of the customer's continuing right to withdraw such authorization at any

(d) Exceptions. Notwithstanding paragraph (c) of this section, a Federal savings association may disclose its customer information to the following:

(1) Any person to whom the customer has affirmatively authorized such disclosure in writing;

(2) Any director, officer, or employee of a Federal savings association having the duty to prepare, examine, handle, maintain, or process customer information in the ordinary course of conducting the association's business;

(3) Any agent of the Federal savings association, any independent contractor providing a service to the association in the ordinary course of the association's business, or any person providing professional services to the association, including, but not limited to, an accountant engaged by the association to prepare an independent audit or an attorney performing a service on behalf of the association;

(4) Any officer, employee, or agent of the Office of Thrift Supervision, a Federal Home Loan Bank, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation for use solely in the exercise of his or

her duties:

(5) A financial institution, commercial enterprise, or credit reporting agency, when such disclosure is part of an exchange in the regular course of business of information pertaining to the credit-worthiness of the customer between a Federal savings association and another financial institution or commercial enterprise, directly or through a credit reporting agency;

(6) Persons to whom reports or returns must be made or information disclosed pursuant to Federal law or regulations including, but not limited to, the Internal Revenue Service, or any government authority acting pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 et seq., or the Bank Secrecy Act, 31

U.S.C. 5311 et seq.

(7) Persons to whom information is permitted to be disclosed under state law concerning the dishonor of a

negotiable instrument;

(8) An appropriate law enforcement authority when the Federal savings association reasonably believes, pursuant to \$ 563.180(d) of this part, that it has been the victim of a crime or has a known factual basis for a belief that a crime has been committed;

(9) Persons making demand pursuant to a lawful subpoena, summons, warrant, or court order or in response to a subpoena from a federal or state grand jury served upon the Federal savings

association;

(10) The savings association's bond or insurance companies when the savings association has information relative to a claim pursuant to its bond or director's and officer's liability insurance policy or other insurance coverage;

(11) Any person for the purpose of engaging in a secondary market

transaction;

(12) Representatives of the United States Department of Justice conducting civil investigations, pursuing civil actions for the purpose of assessing civil money penalties, or pursuing forfeitures for violations of financial institution criminal statutes.

(13) Any person not expressly permitted by this section if the savings association receives the prior written approval of the Office, which may establish the terms and conditions

governing such release.

(e) Confidentiality agreement. Prior to the release by a Federal savings association of its customer information authorized by paragraphs (c)(1) or by exceptions (d)(1), (d)(3), (d)(5), (d)(10) and (d)(11) of this section, the association shall require intended recipients of customer information to execute an agreement stating at a minimum the specific use to be made of the customer information and

prohibiting subsequent disclosure of the customer information to a third party, except if such disclosure is required by law or pursuant to the circumstances set forth in paragraphs (d)(4), (d)(6), (d)(8), (d)(9), and (d)(11) of this section, and, if the recipient of the customer information is a credit reporting agency, subsequent disclosures may be made in the regular course of the credit reporting agency's business.

(f) Informed consent form and procedure. (1) Before releasing any customer information pursuant to paragraph (c)(1)(iii) of this section, a Federal savings association shall:

(i) Provide a copy of an "Informed Consent Form" to all new and existing customers of the association whose customer information is not contained in the public records intended to be disclosed to third persons. The consent form shall contain:

(A) A definition of customer information not contained in a public record ("non-public customer

information");

(B) A statement that the customer has the right to withhold consent to the release of his or her non-public customer information by the Federal savings association;

(C) A description of the types of businesses, organizations, or other persons or entities to whom non-public customer information may be disclosed and the time period, not to exceed two years, in which such disclosures may be made:

(D) A statement that the Federal savings association may seek to release non-public customer information for a longer period than two years, and if an extension is sought, the association shall provide a notice explicitly reminding the customer of the customer's prior authorization and the customer's continuing right to withdraw that authorization.

(E) A statement that if release is contemplated to types of recipients other than those for which authorization is sought the association must obtain new authorization for the release;

(F) A statement that the customer may at any time provide the Federal savings association with written notice withdrawing the customer's prior consent to release non-public customer information and how and to whom such notice must be given;

(G) A statement that non-public customer information may be released pursuant to statute or regulation even when not authorized by the customer;

 (H) A statement authorizing the release of non-public customer information; and (I) A space for the customer's signature and for the date the document was executed.

(ii) Receive a signed and dated consent form from the customer; and

(iii) Retain a copy of each consent form in an appropriate file maintained for the customer providing the authorization.

(2) A Federal savings association shall fulfill the requirement that it obtain consent from its customers before disclosing customer information not contained in a public record under paragraph (c)(1)(iii) of this section by providing a clear and conspicuous document containing the information set forth in paragraph (f)(1) of this section. The following complies with this requirement, but associations are permitted to develop their own-forms containing the required information:

#### **Authorization to Disclose Customer Information**

[Customer Name] [Account/Loan Number(s)]

Under applicable Federal law and regulations [name of association] must obtain your consent to disclose non-public information concerning your account balances, loans, or other financial activities to various entities. This information that pertains to your financial transactions is known as non-public customer information.

[Name of association] desires to disclose such information during the next [period of time not to exceed two years] to [insert types of persons or entities to which the customer records are intended to be disclosed]. These persons or entities may contact you to offer you a product or service. These persons or entities have agreed, or will be required to agree, not to disclose this information to any other person or business, except as permitted by law and regulation, and have agreed that non-public customer information shall remain confidential. [Name of association] may receive a fee for the release of customer records. In the event that the association wishes to disclose such information to persons or entities not described above, the association will seek reauthorization. In the event the association wishes to disclose this information beyond two years, it will provide you with notice.

Without your consent, [Name of association] cannot disclose your non-public customer information except as provided for

by law and regulation.

If you provide your consent to disclose this information now or in the future, you may withdraw your consent at any time. You may withdraw your consent by writing [name of association] at the following address:

[Name of association]
[Address of association]
[Attn:

If, after reading the following statement, you consent to the release of non-public customer information, sign your name on the 49510

space provided and return this form to [name of association].

#### Authorization

I HEREBY PROVIDE MY CONSENT TO [name of association] TO RELEASE MY NON-PUBLIC CUSTOMER INFORMATION TO THIRD PERSONS, AND UNDERSTAND THAT I MAY WITHDRAW SUCH CONSENT AT ANY TIME. I HAVE BEEN INFORMED OF MY RIGHT TO WITHHOLD MY CONSENT FOR [name of association] TO RELEASE MY NON-PUBLIC CUSTOMER INFORMATION AND I HAVE READ THE INFORMATION PRINTED ABOVE.

Name of customer

#### Date

(3) Federal savings associations shall not release any person's non-public customer information and shall take such affirmative steps as may be necessary to insure that such customer information is not released:

(i) If the customer has not authorized the disclosure of such information;

(ii) If at any time, the Federal association receives written notification of a customer's withdrawal of consent to release customer information pursuant this section.

(4) A customer may, at any time, withdraw the consent by writing to the Federal savings association and informing it of the withdrawal of consent.

(5) For the purpose of compliance with the renewal notice requirement of paragraph (c)(3) of this section for release of non-public customer information to third persons, the following notice will be considered to be in compliance with that section, but Federal savings associations may develop their own notices provided that the equivalent information is contained therein:

## Renewal Notice for Release of Non-Public Information

[Name of customer] [Account/Loan number(s)]

You previously gave [name of association] your consent to disclose non-public information concerning your account balances, loans, or other financial activities to [types of persons or entities to which the customer information has been disclosed]. This information that pertains to your financial transactions is known as non-public customer information.

[Name of association] is required by law or regulation to inform you at least every two years of your right to withdraw your consent at any time. If you decide to withdraw your consent, your non-public customer information will no longer be disclosed once we receive a written notice withdrawing your consent. You may withdraw your consent by writing to the following address:

[Name of association]

[Address of association]
Attn: [appropriate employee of association]

#### § 545.133-545.135 [Reserved]

#### § 545.136 Financial futures transactions.

A Federal savings association may engage in financial futures transactions in compliance with § 563.174 of this chapter.

### § 545.137 Financial options transactions.

A Federal savings association may engage in financial options transactions in compliance with § 563.175 of this chapter.

### § 545.138 Data-processing services.

(a) Authorization. A Federal savings association may engage in any permissible activity or service by using data processing equipment or technology, and may provide data processing and data transmission services to others on a for-profit basis as permitted by this section. An association may establish and maintain an office to provide such services to others without observing the application and approval procedures for branch offices set forth in this part.

(b)(1) Permissible data. The data to be processed or transmitted by a Federal savings association pursuant to paragraph (a) of this section must be financial, economic, or related to thrift, home financing, or the activities of

depository institutions.

(2) Customer restrictions. A Federal savings association must provide data processing and transmission services primarily for itself, other depository institutions (including the parent or a subsidiary of either), and persons with whom the Federal savings association has established a loan or deposit relationship. A Federal savings association may also provide such services to other persons if the services constitute less than one half of the data processing services provided under paragraphs (a) and (b) of this section.

(3) Facilities. In conjunction with providing services pursuant to paragraphs (a) and (b) of this section, a Federal savings association may supply data processing software, documentation, and operating personnel. Any such facilities, as well as those used by the Federal savings association, must be designed and operated for the processing or transmission of permissible data.

(c) By-products and excess capacity.
As an incident to providing data processing and data transmission services pursuant to paragraph (b) of this section, a Federal savings association may:

(1) Market by-products of such services (including software and compilations of data) to any person, only if the by-products are not designed, created, or substantially enhanced primarily for the purpose of such marketability, and

(2) Market excess capacity of its data processing facilities, provided that the involvement of the Federal savings association is limited to furnishing access to its facilities and providing the necessary operating personnel, and that the Federal savings association has not artificially created excess capacity by acquiring equipment or facilities whose capacity is substantially greater than that necessary to accommodate its present or expected future needs for providing permissible data processing services.

(d) Controls. A Federal savings association providing data processing services or marketing excess capacity to any person under this section shall establish internal and system controls for both hardware and software such that the integrity of its records and those of its depositors and customers are adequately protected. At a minimum, the controls shall be consistent with Generally Accepted Auditing Standards. Any agreement pursuant to which the Federal savings association provides data processing services shall contain a provision that generally describes the security measures so taken.

(e) Contract and tying restrictions.

Any contract for data processing services authorized by this section shall incorporate the relevant limitations specified herein and state that the Federal savings association's facilities are to be used only for the processing and transmission of permissible data. A Federal savings association providing such services under this section shall comply with the anti-tying provisions of section 5(q) of the Act.

(f) Participation. A Federal savings association may participate with others in establishing or maintaining a data processing office: Provided, That the Federal savings association may participate in establishing or maintaining a data processing office controlled by an entity not subject to examination by a Federal agency regulating financial institutions only if such entity has agreed in writing with the Office that it will permit and pay for such examination of the office as the Office deems necessary, and that it will make available for such purposes any records in its possession relating to the operation of the Office.

### § 545.139-545.140 [Reserved]

### § 545.141 Remote Service Units (RSUs).

(a) Definitions. As used in this

(1) Generic data means statistical information which does not identify any individual accountholder.

(2) Personal security identifier (PSI) means any word, number, or other security identifier essential for an accountholder to gain access to an

(3) Remote service unit (RSU) means an information processing device, including associated equipment, structures and systems, by which information relating to financial services rendered to the public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device not on the premises of a Federal savings association that, for activation and account access, requires use of a machine-readable instrument and PSI in the possession and control of an accountholder, is an RSU. The term includes, without limitation, point-ofsale terminals, merchant-operated terminals, cash-dispensing machines, and automated teller machines. It excludes automated teller machines on the premises of a Federal savings association, unless shared with other financial institutions. An RSU is not a branch, satellite, or other type of facility or agency of a Federal savings association under § 545.92 et seq. of this

(4) RSU account means a savings or loan account or demand account that may be accessed through use of an RSU.

(b) General. Subject to the requirements of the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E of the Federal Reserve Board (12 CFR 205.2), a Federal savings association may establish or use RSUs and participate with others in RSU operations, on an unrestricted geographic basis. No RSU may be used to open a savings account, a demand account or establish a loan account.

(c) RSU access techniques. A Federal savings association shall provide a PSI to each accountholder and require its use when accessing an RSU; it may not employ RSU access techniques that require the accountholder to disclose a PSI to another person. The savings association must inform each accountholder that the PSI is for security purposes and shall not be disclosed to third parties. Any device used to activitate an RSU shall bear the words "Not transferable" or their equivalent. A passbook may not be such a device.

(d) Privacy of account data. A Federal savings association shall allow

accountholders to obtain any information concerning their RSU accounts. Except for generic data or data necessary to identify a transaction, no Federal savings association may disclose account data to third parties, other than the Office or its representatives, unless express written consent of the accountholder is given, or applicable law requires. Information disclosed to the Office will be kept in a manner to ensure compliance with the Privacy Act, 5 U.S.C. 552a. A Federal savings association may operate an RSU according to an agreement with a third party or share computer systems, communications facilities, or services of another financial institution only if such third party or institution agrees to abide by this section as to information concerning RSU accounts in the Federal savings association.

(e) Security. A Federal savings association shall protect electronic data against fraudulent alterations or disclosure. All RSUs shall meet the minimum security devices requirements of Part 568 of this chapter as though such units were offices, as defined in § 568.1 of said part, except to the extent that a savings association satisfies the Office's District Director that those requirements are inappropriate. In such a case, alternative measures satisfactory to the Office's District Director must be taken for installation, maintenance, and operation of security devices and procedures, reasonable in cost, to discourage robberies, burglaries, larcenies, and computer theft and to assist in identification and apprehension of persons who commit such acts.

(f) Office supervision. A Federal savings association may share an RSU controlled by a financial institution or another party not subject to examination by a Federal regulatory agency only if such financial institution or other party has agreed in writing that the RSU is subject to such examination by the Office as it deems necessary.

### § 545.142 Home banking services.

A Federal savings association may utilize any electronic technology to provide its customers with home banking services. Any such services provided under this section are subject to the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E of the Federal Reserve Board (12 CFR 205.2) (as construed by Supplement II-Official Staff Interpretation, 2-23). "Home banking services" means the transfer of funds or financial information, or the performance of other transactions initiated by a customer by means of an electronic home terminal, such as a telephone, a home computer

terminal, or a television set that is linked to a Federal savings association's computer by telephone or cable television lines. A Federal savings association providing services authorized by this section shall adopt security measures adequate to prevent unauthorized access to its records or those of its customers or the use of a home terminal to defraud the Federal savings association or any of its customers.

#### PART 546-MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

Definitions.

Procedure; effective date.

Transfer of assets upon merger. 546.3

Voluntary dissolution. 546.4

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, lo3 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 et seq.).

#### § 546.1 Definitions.

As used in § \$ 546.2 and 546.3:

(a) The term "Savings Association" means a Federal savings association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan, or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association.

(b) The term "Merging association" means a savings association absorbed

by merger; and

(c) The term "Resulting association" means the savings association whose corporate existence continues after absorbing a merging association.

#### § 546.2 Procedure; effective date.

(a) A Federal mutual savings association and any other Federal savings association and/or one or more other savings associations may merge only as prescribed in this part and subject to the requirements of § 563.22 of this chapter, if, as to any such association which is not a Federal savings association, the merger is also in accordance with the laws of the

jurisdiction in which the association

was organized.

(b) Each association, by a two-thirds vote of its board of directors, shall approve a plan of merger evidenced by a merger agreement. The agreement shall state that it is effective only when approved by the Office and shall specify:

(1) Which association will be the

resulting association;

(2) The name it will use;(3) The location of its home office and

branch offices;
(4) The bases on which its savings accounts will be issued; and

(5) The number of its directors and their names, addresses, and the length

of their terms.

(c) Prior written approval of the Office is required for every merger. In determining whether to confer such approval, the Office shall apply the criteria set out in § 571.5 of this chapter and shall impose any conditions it deems necessary or appropriate to ensure compliance with those criteria and the requirements of this chapter.

(d)(1) Processing of an application under this section shall follow the procedures set forth in § 563.22 of this chapter except that applicants may also mail such notice to the voting members of each savings association within the

time specified in § 543.2(d).

(2) In approving a merger under this section, the Director, or any person(s) who have delegated authority to approve the merger on behalf of the Director, may also approve a temporary increase in the number of directors of the resulting association provided that the association submits a plan for bringing the board of directors into compliance with the requirements of § 544.1 or § 552.3 of this subchapter within a reasonable period of time.

(e) Notwithstanding any other provision of this part, the Director, or any person(s) who have delegated authority to approve or deny a merger on behalf of the Director, may require that a plan of merger be submitted to the voting members of any of the mutual associations at a duly called meeting(s) and that the plan, to be effective, be

approved by them.

(f) A conservator or receiver for an association may merge the association with another under §§ 546.2 and 546.3 without submitting the plan to the association's board of directors or members for their approval.

(g) If a plan of merger provides for the resulting association's name or location to be changed, and it is a Federal savings association, its charter shall be amended accordingly. If the resulting association is a Federal savings

association, the effective date of merger shall be the date specified in the approval; if the resulting association is not a Federal savings association, the effective date shall be that prescribed by the State law under which the resulting association was created, if applicable, or any other applicable law. Approval of a merger automatically cancels the Federal charter of each of the merging Federal savings associations as of the effective date of merger and those associations shall, on that date, surrender their charters to the Office.

#### § 546.3 Transfer of assets upon merger.

On the effective date of a merger in which the resulting association is a Federal association, all assets and property of the merging associations shall immediately, without any further act, become the property of the resulting association to the same extent as they were the property of the merging associations, and the resulting association shall be a continuation of the entity which absorbed the merging associations. All rights and obligations of the merging association shall remain unimpaired, and the resulting association shall, on the effective date of merger, succeed to all those rights and obligations.

#### § 546.4 Voluntary dissolution.

A Federal savings association's board of directors may propose a plan for dissolution of the association. The plan

may provide for either:

(a) Appointment of the Federal
Deposit Insurance Corporation or the
Resolution Trust Corporation (under
section 5 of the Act and section 11 of the
Federal Deposit Insurance Act, as
amended or section 21A of the Federal
Home Loan Bank Act, as amended) as
receiver for the purpose of liquidation;

(b) Transfer of all the association's assets to another association and home-financing institution under Federal or State charter either for cash sufficient to pay all obligations of the association and retire all outstanding accounts or in exchange for that association's payment of all the association's outstanding obligations and issuance of share accounts or other evidence of interest to the association's members on a pro rata basis; or

(c) Dissolution in a manner proposed by the directors which they consider

best for all concerned.

The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the Director for approval. The Director will approve the plan if he or she believes dissolution is advisable and the plan

best for all concerned, but if he or she considers the plan inadvisable, he or she may either make recommendations to the association concerning the plan or disapprove it. When the plan is approved by the association's board of directors and by the Director, it shall be submitted to the association's members at a duly called meeting and, when approved by a majority of votes cast at that meeting, shall become effective. After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Director may require, shall immediately be filed with the Director. When the Director receives such evidence satisfactory to him or her, he or she will terminate the corporate existence of the dissolved association and the association's charter shall thereby be cancelled.

## PART 550—TRUST POWERS OF FEDERAL SAVINGS ASSOCIATIONS

Sec

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Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464), sec. 501, 94 Stat. 161, as amended (12 U.S.C. 1735f-7).

#### § 550.1 Definitions.

(a) Account means the trust, estate or other fiduciary relationship which has been established with a Federal savings association;

(b) Custodian under a uniform gifts to minors act means an account established pursuant to a state law which is substantially similar to the Uniform Cifts to Minors Act as published by the American Law Institute and with respect to which the Federal savings association operating such account has established to the satisfaction of the Secretary of the

Treasury that it has duties and responsibilities similar to the duties and responsibilities of a trustee or guardian.

(c) Fiduciary means a Federal savings association undertaking to act alone, through an affiliate, or jointly with others primarily for the benefit of another in all matters connected with its undertaking and includes trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, or paying agent, trustee of employee pension, welfare and profit sharing trusts, and any other similar capacity;

(d) Fiduciary records means all matters which are written, transcribed, recorded, received or otherwise come into the possession of a Federal savings association and are necessary to preserve information concerning the actions and events relevant to the fiduciary activities of a Federal savings

association;

(e) Guardian means the guardian, conservator, or committee by whatever name employed by local law, of the estate of an infant, an incompetent individual, an absent individual, or a competent individual over whose estate a court has taken jurisdiction, other than under bankruptcy or insolvency laws:

(f) Investment authority means the responsibility conferred by action of law or a provision of an appropriate governing instrument to make, select or change investments, review investment decisions made by others, or to provide investment advice or counsel to others;

(g) Local law means the law of the state or other jurisdiction governing the

fiduciary relationship;

(h) Managing agent means the fiduciary relationship assumed by a Federal savings association upon the creation of an account which names the Federal savings association as agent and confers investment discretion upon the Federal savings association;

(i) State-chartered corporate fiduciary means any state bank, trust company, or other corporation which comes into competition with Federal savings associations and is permitted to act in a fiduciary capacity under the laws of the state in which the Federal savings

association is located;

(j) Trust department means that group or groups of officers and employees of a Federal savings association or of an affiliate of a Federal savings association to whom are assigned the performance of fiduciary services by the Federal savings association;

(k) Trust powers means the power to act in any fiduciary capacity authorized by section 403 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221,

94 Stat. 132, 12 U.S.C. 1464(n). Under the Act, a Federal savings association may be authorized to act, when not in contravention of local law, as trustee, executor, administrator, guardian, receiver, managing agent, registrar of stocks and bonds, escrow, transfer, and paying agent, trustee of employee pension, welfare, and profit-sharing trusts, or in any other fiduciary capacity which state-chartered corporate fiduciaries exercise under local law: Provided, That the granting to, and exercise of, such powers shall not be deemed to be in contravention of state or local law whenever the laws of such state authorize or permit the exercise of any or all of the foregoing powers by state banks, trust companies, or other corporations which compete with Federal savings associations.

§ 550.2 Applications.

(a) A Federal savings association desiring to exercise fiduciary powers, either through a trust department or through an affiliate, shall file with the District Director an application indicating which trust services it wishes to offer and providing the information necessary to make the determinations under paragraph (b) of this section.

(b) In addition to any other facts or circumstances deemed proper, the Office, in passing upon an application to exercise trust powers, will give consideration to the following:

(1) The financial condition of the Federal savings association, provided that in no event shall trust powers be granted to a Federal savings association if its financial condition is such that the Federal savings association does not meet the financial standards required by state laws of State-chartered corporate fiduciaries;

(2) The needs of the community for fiduciary services and the probable volume of such fiduciary business available to the Federal savings

association;

(3) The general character and ability of the management of the Federal

savings association;

(4) The nature of the supervision to be given to the fiduciary activities, including the qualifications, experience and character of the proposed officer or officers of the trust department; and

(5) Whether the Federal savings association has available legal counsel to advise and pass upon fiduciary matters wherever necessary.

(c) The District Director, or his designee, is authorized to approve or disapprove any application filed under this section, that does not raise any significant issues of law or policy on which the Office has not taken a formal

position. If each of the following conditions are not met, the District Director's (or his designee's) approval of such application must be made conditional upon each being met:

(1) The financial condition of the Federal savings association meets the financial standards prescribed for Statechartered corporate fiduciaries by the laws of each state in which the Federal savings association has offices from which it will offer the fiduciary services (the District Director may consider the regulatory capital of a Federal mutual savings association as equivalent to capital stock and surplus when state law prescribes minimum capital stock and surplus requirements) and the District Director has determined that the financial condition of the Federal savings association is sufficient to support the proposed trust operations;

(2) The Federal savings association has submitted a legal opinion from independent counsel certifying that the proposed trust powers are authorized for State-chartered corporate fiduciaries by the laws of each State in which the Federal savings association has offices from which it will offer fiduciary

services;

(3) The Federal savings association's regulatory capital meets the Office's minimum requirements for that association under §§ 567.2 or 567.3 of this chapter;

(4) Based on the most recent examination of the Federal savings association and any other available information, the District Director determines that any deficiencies with respect to the Federal savings association's management are minor;

(5) Based on the most recent examination of the Federal savings association and any other available information, the District Director determines that the overall performance of the Federal savings association is satisfactory;

(6) The proposed trust officer(s) who would be in charge of the trust

operations must:

 (i) Have been responsible for trust operations or fiduciary matters comparable to those proposed, for a period of at least two years during the previous five years; or

(ii) Have had two years of such experience prior to the last five years and successfully completed, during the previous year, an intensive course on trust operations comparable to those

proposed:

(7) The District Director determines, based on the information available, that the proposed trust officer(s) is trustworthy and competent (the person's experience, education and other relevant factors may be considered) to be in charge of the proposed trust operations;

(8) The proposed trust department or service corporation has legal counsel available to provide advice with respect

to fiduciary matters;

(9) The District Director has determined that there is sufficient need for the proposed trust activities in the communities to be served; and

(10) The approval of the appropriate Federal or State authorities has been obtained if the proposed fiduciary services are to be exercised through a state or Federally chartered service

corporation.

(d) Approval by the Office or the District Director of an application under this section authorizes the applicant to exercise only those trust powers specified in the approval. Unless otherwise provided by the approval, fiduciary services based on those trust powers may be offered only in those offices listed in the application.

# § 550.3 Consolidation or merger of two or more Federal savings associations.

Where two or more Federal savings associations consolidate or merge, and any one of such Federal savings associations has, prior to such consolidation or merger, received a permit from the Office to exercise trust powers which permit is in force at the time of the consolidation or merger, the rights existing under such permit pass to the resulting Federal savings association, and the resulting Federal savings association may exercise such trust powers in the same manner and to the same extent as the Federal savings association to which such permit was originally issued; and no new application to continue to exercise such powers is necessary. However, when the name or charter number of the resulting Federal savings association differs from that of the Federal savings association to which the right to exercise trust powers was originally granted, the Office or the District Director will issue a certificate to that Federal savings association showing its right to exercise the trust powers theretofore granted to any of the Federal savings associations participating in the consolidation or merger.

# § 550.4 Deposit of securities with State authorities.

Whenever local law requires a corporation acting as a fiduciary to deposit securities with State authorities for the protection of private or court trusts, Federal savings associations in that state authorized to exercise trust

powers shall, before undertaking to act in any fiduciary capacity, make a similar deposit with the state authorities. If the state authorities refuse to accept such a deposit, the securities shall be deposited with the Federal Home Loan Bank of which the Federal savings association is a member, and such securities shall be held for the protection of private or court trusts with like effect as though the securities had been deposited with the State authorities.

## § 550.5 Administration of trust powers.

(a)(1) Responsibility of the board of directors. The board of directors is responsible for the proper exercise of fiduciary powers by the Federal savings association. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity. and the direction and review of the actions of all officers, employees, and committees utilized by the Federal savings association in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the Federal savings association's trust powers as it may consider proper to assign to such director(s), officer(s), employee(s), or committee(s) as it may designate.

(2) Administration of accounts. No fiduciary account shall be accepted without the prior approval of the board, or of the director(s), officer(s), or committee(s) to whom the board may have assigned the performance of that responsibility. A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the Federal savings association has investment responsibilities, a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, and within 15 months of the last review, all the assets held in or held for each fiduciary account for which the Federal savings association has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets. The board of directors should act to ensure that all investments have been made in accordance with the terms and purposes of the governing instrument.

(b) Use of other Federal savings association personnel. The trust department may utilize personnel and facilities of other departments of the Federal savings association, and other departments of the Federal savings

association may utilize personnel and facilities of the trust department only to the extent not prohibited by law.

(c) Compliance with Federal securities laws. Every Federal savings association exercising trust powers shall adopt written policies and procedures to ensure that the Federal securities laws are complied with in connection with any decision or recommendation to purchase or sell any security. Such policies and procedures, in particular, shall ensure that the Federal savings association's trust departments shall not use material inside information in connection with any decision or recommendation to purchase or sell any security.

(d) Legal counsel. Every Federal savings association exercising fiduciary powers shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the Federal savings association and its trust department.

(e) Bonding. In addition to the minimum bond coverage required by § 563.190 of this chapter, directors, officers, and employees of a Federal savings association engaged in the operation of a trust department shall acquire such additional bond coverage as the office may require.

#### § 550.6 Books and accounts.

(a) General. Every Federal savings association exercising trust powers shall keep its fiduciary records separate and distinct from other records of the Federal savings association. All fiduciary records shall be so kept and retained for such time as to enable the Federal savings association to furnish such information or reports with respect thereto as may be required by the office. The fiduciary records shall contain full information relative to each account.

(b) Record of pending litigation. Every Federal savings association shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of trust powers.

## § 550.7 Audit of trust department.

At least once during each calendar year, the Federal savings association's trust department shall be audited by auditors in a manner consistent with § 563.170 of this chapter. A copy of the report of the audit shall be promptly filed with the District Director of the District in which the principal office of the Federal savings association is located. Trust department audits may be made as part of the annual audits required by § 563.170.

§ 550.8 Funds awaiting investment or distribution.

(a) General. Funds held in a fiduciary capacity by a Federal savings association awaiting investment or distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper management

of the account.

(b) Use by Federal savings association in regular business. (1) Funds held in trust by a Federal savings association, including managing agency accounts, awaiting investment or distribution may, unless prohibited by the instrument creating the trust or by local law, be deposited in other departments of the Federal savings association, provided that the Federal savings association shall first set aside under control of the trust department as collateral security:

(i) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to

principal and interest;

(ii) Readily marketable securities of the classes in which state-chartered corporate fiduciaries are authorized or permitted to invest trust funds under the laws of the state in which such Federal savings association is located; or

(iii) Other readily marketable securities as the Office may determine.

(2) Collateral securities or securities substituted therefor as collateral shall at all times be at least equal in face value to the amount of trust funds so deposited, but such security shall not be required to the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation. The requirements of this paragraph (b)(2) are met when qualifying assets of the Federal savings association are pledged to secure a deposit in compliance with local law, and no duplicate pledge shall be required in such case.

(3) Any funds held by a Federal savings association as fiduciary awaiting investment or distribution and deposited in other departments of the Federal savings association shall be

made productive.

# § 550.9 Investment of funds held as fiduciary.

(a) Private trusts. Funds held by a Federal savings association in a fiduciary capacity shall be invested in accordance with the instrument establishing the fiduciary relationship and local law. When such instrument does not specify the character or class of investments to be made and does not vest in the Federal savings association, its directors, or its officers investment discretion in the matter, funds held pursuant to such instrument shall be

invested in any investment in which state-chartered corporate fiduciaries may invest under local law.

(b) Court trusts. If, under local law, corporate fiduciaries appointed by a court are permitted to exercise discretion in investments, or if a Federal savings association acting as fiduciary under appointment by a court is vested with discretion in investments by an order of such court, funds of such accounts may be invested in any investments which are permitted by local law. Otherwise, a Federal savings association acting as fiduciary under appointment by a court must make all investments of funds in such accounts under an order of that court. Such orders in either case shall be preserved with the fiduciary records of the Federal savings association.

(c) Collective investment of trust funds. The collective investment of funds received or held by a Federal savings association as fiduciary is governed by § 550.13 of this Part.

#### § 550.10 Self-dealing.

(a) Purchase of obligations, etc., from Federal savings association. Unless lawfully authorized by the instrument creating the relationship, or by court order or local law, funds held by a Federal savings association as fiduciary shall not be invested in stock or obligations of, or property acquired from, the Federal savings association or its directors, officers, or employees, or individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the Federal savings association in acquiring the property, or in stock or obligations of, or property acquired from, affiliates of the Federal savings association or their directors, officers or employees.

(b) Sale or transfer of trust assets to Federal savings association. Property held by a Federal savings association as fiduciary shall not be sold or transferred, by loan or otherwise, to the Federal savings association or its directors, officers, or employees, or to individuals with whom there exists such a connection, or organizations in which there exists such an interest, as might affect the exercise of the best judgment of the Federal savings association in selling or transferring such property, or to affiliates of the Federal savings association or their directors, officers or

employees, except:

(1) When lawfully authorized by the instrument creating the relationship or by court order or by local law:

(2) In cases in which the Federal savings association has been advised by

its counsel in writing that it has incurred as fiduciary a contingent or potential liability and desires to relieve itself from such liability, in which case such a sale or transfer may be made with the approval of the board of directors and the District Director, provided, That in all such cases the Federal savings association, upon the consummation of the sale or transfer, shall make reimbursement in cash at no loss to the account;

- (3) As provided in the laws and regulations governing collective investments; and
  - (4) When required by the Office.
- (c) Investment in stock of Federal savings association. Except as provided in § 550.8(b) of this part, funds held by a Federal savings association as fiduciary shall not be invested by the purchase of stock or obligations of the Federal savings association or its affiliates unless authorized by the instrument creating the relationship or by court order or by local law: Provided, that if the retention of stock or obligations of the Federal savings association or its affiliates is authorized by the instrument creating the relationship or by court order or by local law, it may exercise rights to purchase its own stock or securities convertible into its own stock when offered pro rata to stockholders, unless such exercise is forbidden by local law. When the exercise of rights or receipt of a stock dividend results in fractional share holdings, additional fractional shares may be purchased to complement the fractional shares so acquired. In elections of directors, a Federal savings association's share held by the Federal savings association as sole trustee, whether in its own name as trustee or in the name of its nominee, may not be voted by the registered owner unless, under the terms of the trust, the manner in which such shares shall be voted may be determined by a donor or beneficiary of the trust and the donor or beneficiary actually directs how the shares will be voted.
- (d) Transactions between accounts.
  (1) A Federal savings association may sell assets held by it as fiduciary in one account to itself as fiduciary in another account if the transaction is fair to both accounts and if such transaction is not prohibited by the terms of any governing instrument or by local law.
- (2) A Federal savings association may make a loan to an account from the funds belonging to another such account, when the making of such loans to a designated account is authorized by the instrument creating the account from which such loans are made, and is not

prohibited by local law, and the terms of the transaction are fair to all accounts.

(3) A Federal savings association may make a loan to an account and may take as security therefor assets of the account, provided such transaction is fair to such account and is not prohibited by local law.

#### § 550.11 Custody of Investments.

(a) Segregation of trust assets and joint custody. The investments of each account shall be kept separate from the assets of the Federal savings association, and shall be placed in the joint custody or control of not fewer than two of the officers or employees of the Federal savings association designated for that purpose either by the board of directors of the Federal savings association or by one or more officers designated by the board of directors of the Federal savings association, and all such officers and employees shall be adequately bonded. To the extent permitted by law, a Federal savings association may permit the investments of a fiduciary account to be deposited elsewhere.

(b) Segregation of accounts. The investments of each account shall be

(1) Kept separate from those of all other accounts, except as provided in § 550.13 of this part; or

(2) Adequately identified as the property of the relevant account.

#### § 550.12 Compensation of Federal savings association.

(a) General. If the amount of the compensation for acting in a fiduciary capacity is not regulated by local law or provided for in the instrument creating the fiduciary relationship or otherwise agreed to by the parties, a Federal savings association acting in such capacity may charge or deduct a reasonable compensation for its services. When the Federal savings association is acting in a fiduciary capacity under appointment by a court, it shall receive such compensation as may be allowed or approved by that court or by local law.

(b) Officer or employee of Federal savings association as co-fiduciary. No Federal savings association shall, except with the specific approval of its board of directors, permit any of its officers or employees, while serving as such, to retain any compensation for acting as a co-fiduciary with the Federal savings association in the

administration of any account

undertaken by it.

(c) Bequests or gifts to trust officers and employees. No Federal savings association shall permit an officer or

employee engaged in the operation of its trust department to accept a bequest or gift of trust assets unless the bequest or gift is directed or made by a relative or is approved by the board of directors of the Federal savings association.

#### § 550.13 Collective investment.

(a) When not in contravention of local law, funds held by a Federal savings association as fiduciary may be held in:

(1) A common trust fund maintained by the Federal savings association exclusively for the collective investment and reinvestment of moneys contributed thereto by the Federal savings association in its capacity as trustee, executor, administrator, guardian, or custodian under a Uniform Gifts to Minors Act; or

(2) A fund consisting solely of assets of retirement, pension, profit sharing, stock bonus or other trusts which are exempt from Federal income taxation under the Internal Revenue Code.

(b) Collective investments of funds or other property by a Federal savings association under paragraph (a) of this section shall be administered in accordance with Comptroller of the Currency Regulation 9.18, 12 CFR 9.18: provided, That any documents required to be filed with the Comptroller of the Currency under that regulation shall also be filed with the District Director and that the Office may review such documents for compliance with these and other laws and regulations.

(c) As used in this section, the term Federal savings association shall include two or more Federal savings associations which are members of the same affiliated group with respect to any fund established pursuant to § 550.13 of this part of which any of such affiliated Federal savings associations is trustee, or of which two or more of such affiliated Federal savings associations are co-trustees.

#### § 550.14 Surrender of trust powers.

(a) Any Federal savings association which has been granted the right to exercise trust powers and which desires to surrender such rights shall file with the District Director a certified copy of the resolution of its board of directors signifying such desire. In addition, the Federal savings association must submit to the District Director an opinion from its legal counsel stating that the Federal savings association has been discharged from all fiduciary duties which it has undertaken, with respect to the trust services it has provided.

(b) Upon receipt of such resolution, the District Director shall make an investigation and if it is satisfied that the Federal savings association has

been discharged from all fiduciary duties which it has undertaken, it shall issue a certificate to such Federal savings association certifying that it is no longer authorized to exercise fiduciary powers.

(c) Upon issuance of such a certificate by the District Director, a Federal

savings association:

(1) Shall no longer be subject to the provisions of these regulations,

(2) Shall be entitled to have returned to it any securities which it may have deposited with state authorities or a Federal Home Loan Bank under § 550.4 of this part, and

(3) Shall not exercise thereafter any of the powers granted by this part 550 without first applying for and obtaining new authorization to exercise such

powers.

#### § 550.15 Effect on trust accounts of appointment of conservator or receiver or voluntary dissolution of association.

(a) Appointment of conservator or receiver. Whenever a conservator or receiver is appointed for a Federal savings association under parts 558 and 559 of this title, such receiver or conservator shall, pursuant to the instructions of the Office and the orders of the court having jurisdiction, proceed to close such of the Federal savings association's trust accounts as can be closed promptly and transfer all other such accounts to substitute fiduciaries.

(b) Voluntary dissolution. Whenever a Federal savings association exercising trust powers is placed in voluntary dissolution, the liquidating agent shall, in accordance with local law, proceed at once to liquidate the affairs of the trust

department as follows:

(1) All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of as soon as practicable in accordance with the order or instructions of such court; and

(2) All other accounts which can be closed promptly shall be closed as soon as practicable and final accounting made therefor, and all remaining accounts shall be transferred by appropriate legal proceedings to substitute fiduciaries.

#### § 550.16 Revocation of trust powers.

(a) In addition to the other sanctions available, if, in the opinion of the Office, a Federal savings association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the powers granted by this part 550 or otherwise fails or has failed to comply with the requirements of this part 550.

the Office may issue and serve upon the Federal savings association a notice of intent to revoke the authority of the Federal savings association to exercise the powers granted by this part 550. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should be issued against the Federal savings association.

(b) Such hearing shall be conducted in accordance with the provisions of part 509 of this chapter, and shall be fixed for a date not earlier than thirty days and not later than sixty days after service of such notice unless an earlier or later date is set by the Office at the request of the Federal savings association so

served.

- (c) Unless the Federal savings association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent or if, upon the record made at any such hearing, the Office shall find that any allegation specified in the notice of charges has been established, the Office may issue and serve upon the Federal savings association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this Part 550 except that such order shall permit the Federal savings association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.
- (d) A revocation order shall become effective not earlier than the expiration of thirty days after service of such order upon the Federal savings association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Office or a reviewing court.

## PART 552-INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

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#### Appendix to Part 552-Model Bylaws for Stock Associations

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

#### § 552.1 Definitions.

As used in this part, the following terms shall have the indicated meanings.

(a) Federal stock association. The term "Federal stock association" means a Federal savings and loan association or Federal savings bank which has been issued a charter in the form prescribed in § 552.3 of this part, or such other form as authorized by the Office.

(b) Federal stock charter. A charter of a Federal stock association in the form specified in § 552.3 or its predecessors, or permitted by § 552.4 of this part, or other action of the Office.

(c) Capital. The term "capital" means the aggregate of the consideration received upon the issuance of capital stock.

## § 552.2 Corporate title.

The provisions of § 543.1 of this subchapter shall be applicable to Federal stock associations.

## § 552.2-1 Procedure for organization of Federal stock association.

(a) Application for permission to organize. Applications for permission to organize a Federal stock association shall be subject to the provisions of

paragraphs (a) through (f) of § 543.2 of this subchapter.

(b) Conditions of approval. Decisions on all applications for permission to organize a Federal stock association will be made by the Director or his or her

(1) Factors that will be considered are: (i) Whether the applicants are persons of good character and responsibility;

(ii) Whether a necessity exists for such association in the community to be

(iii) Whether there is a reasonable probability of the association's usefulness and success;

(iv) Whether the association can be established without undue injury to properly conducted existing local thrift and home financing institutions; and

(v) Whether the association will perform a role of providing credit for housing consistent with safe and sound operation of a Federal savings association.

(2) Once an application has been approved, the Office shall promptly send a copy of that application, together with the certificate of approval specified at section 5(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1815(a)(2)), to the Federal Deposit Insurance Corporation.

(3) Approvals of applications will be conditioned on the following:

(i) Receipt by the Office of written confirmation from the Federal Deposit Insurance Corporation that the accounts of the association will be insured by the Federal Deposit Insurance Corporation;

(ii) The sale of a minimum amount of fully-paid capital stock of the association prior to commencing business;

(iii) The submission of a statement that:

(A) The applicants have incurred no expense in organization which is chargeable to the association, and that no such expense will be incurred, and

(B) No funds will be accepted for deposit by the association until organization has been completed;

(iv) Compliance with all applicable laws, rules, and regulations; and

(v) The satisfaction of any other requirement or condition the Director or his or her designee may impose.

(c) Issuance of charter. Upon approval of an application, the Office shall issue to the association a charter for a Federal stock savings association or for a Federal stock savings bank, as requested by the applicants, which shall be in the form provided in this part. Issuance of the charter shall be subject to the condition subsequent that the

organization of the association is completed pursuant to this section.

(d) Interim board of directors and officers. Upon approval of the application and the issuance of the charter, the applicants shall constitute the interim board of directors of the association until the board of directors of the association are elected by its stockholders at the organizational meeting required by paragraph (g) of this section, and the interim officers of the association shall be those persons set forth in the application for permission to organize.

(e) Sale of capital stock. Upon the issuance of the charter, the association shall proceed to offer and sell its capital stock pursuant to the requirements of

part 563g of this chapter.

(f) Bank membership and insurance of accounts. Promptly upon the issuance of the charter, a Federal stock association must qualify as a member of the appropriate Federal Home Loan Bank and meet all requirements necessary to obtain insurance of accounts by the Federal Deposit Insurance Corporation.

(g) Organizational meeting. Promptly upon the completion of the sale of its capital stock, the association shall provide notice, pursuant to § 552.6(b), of a meeting of its stockholders to elect a board of directors. Immediately following such election, the directors shall meet to elect the officers of the association and to undertake any other action necessary under the charter or bylaws to complete corporate organization.

(h) Completion of organization. Organization of a Federal stock association shall be deemed complete for the purposes of this part when:

(1) The association has obtained Federal Home Loan Bank membership and insurance of its accounts from the Federal Deposit Insurance Corporation;

(2) It has completed the sale of and received full payment for its capital

stock;

(3) It has complied with all requirements of Part 563g of this

(4) It has held its organizational meeting for the election of directors and all directors have been elected;
(5) Its officers have been elected and

bonded; and

(6) It has met the requirements and conditions imposed by the Office in connection with approval of the application.

(i) Failure of completion. If organization of a Federal stock association is not completed within six months after the Office approves the application, or within such additional period as the Director or his or her

designee may, in his or her discretion, for good cause grant, the charter shall become void and all subscriptions to capital stock shall be returned.

#### § 552.2-2 Procedures for organization of Interim Federal stock association.

(a) The procedures prescribed in paragraphs (d) through (f) of § 543.2 of this subchapter and § 552.2-1(b) of this part shall not be required with respect to applications for permission to organize an interim Federal stock association except as may be required by parts 546,

563, or 574 of this chapter.

(b) Approval of an application for permission to organize an interim Federal stock association shall be conditioned upon approval by the Office of an application to merge the interim Federal stock institution, or upon approval by the Office of such other transaction that the interim was chartered to facilitate. In evaluating the application, the Director or his or her designee will consider the purpose for which the association will be organized, the form of any proposed transactions involving the organizing association, the effect of the transactions on existing institutions involved in the transactions, and the factors specified in § 552.2-1(b)(1) to the extent relevant.

(c) If a merger or other transaction facilitated by the existence of the interim Federal stock association has not been approved within six months of the approval of the application for permission to organize, unless extended by the Director or his or her designee in his or her discretion for good cause shown, the charter shall be void and all subscriptions for capital stock shall be

returned.

(d) The authority of the Director to approve applications for permission to organize an interim Federal savings association may be exercised as provided in § 543.2 (h)(3)(i) and (h)(3)(ii) of this chapter.

#### § 552.2-3 Federal stock association created in connection with an association in default or in danger of default.

Sections 552.2-1 and 552.2-2 of this part do not apply to a Federal stock association which is proposed by the Federal Deposit Insurance Corporation, or the Resolution Trust Corporation under section 5(p) of the Home Owner's Loan Act of 1933, section 11(c) of the Federal Deposit Insurance Act, or section 21A of the Federal Home Loan Bank Act, or is otherwise chartered by the Office in connection with an association in default or in danger of default. Incorporation and organization of such associations are complete when and under such conditions as the

Director or his or her designee so determines.

## § 552.2-4 Limitations on transaction of business.

No person may organize a Federal stock association, collect money from others for such purpose, or represent himself or herself as authorized to do so, and no Federal stock association shall transact any business prior to completion of its organization, except as provided in this part.

#### § 552.2-5 Conversion from Federal mutual to Federal stock charter.

A Federal mutual association may amend its charter in its entirety to read in a form consistent with this part 552 by a vote of a majority of the total votes of the association members eligible to be cast at any legal meeting. Upon receipt of the following certification, the Office will issue a charter consistent with this part 552 to such Federal savings association on the condition subsequent that all stock proposed to be issued in its application filed pursuant to part 563b of this chapter is sold:

The undersigned, by its secretary, hereby certifies that the members at a meeting duly called and held adopted the following

Be it resolved, that the present charter of this association be amended to read in the form of a Federal stock association as attached hereto.

In witness whereof, the secretary of the undersigned has hereunto affixed his or her hand and the seal of the undersigned this \_, 19\_ day of \_

#### § 552.2-6 Conversion from State stock to Federal stock association.

With the approval of the District Director or his or her designee, or, in connection with a supervisory transaction, with the approval of the Chief Counsel or his or her designee. any state stock savings and loan association type or state stock savings bank type institution may convert to a Federal stock savings and loan association or a Federal stock savings bank, subject to its compliance with the requirements set forth in §§ 543.8 through 543.10 of this subchapter governing conversion to a Federal mutual association and its submission of an opinion by independent counsel within six months from the date of the approval that the conversion is in conformance with applicable state law. In lieu of compliance with the requirement of § 543.9(b)(4), an applicant shall provide that the holders of nonwithdrawable capital stock of the applicant shall exchange, on a one-forone basis, each share of such stock for a

share of nonwithdrawable capital stock in the Federal stock association. The new types and classes of stock shall be the same as the former types and classes; however, types and classes of stock that contain provisions inconsistent with the provisions and standards that must be set forth in a charter consistent with part 552 shall be amended to conform therewith.

#### § 552.3 Charters for Federal stock associations.

(a) The charter of a Federal stock association shall be in the following form, except that an association that has converted from the mutual form pursuant to part 563b of this chapter shall include in its charter a section establishing a liquidation account as required by § 563b.3(c)(13) of this chapter. A charter for a Federal stock savings bank shall substitute the term "savings bank" for "association." Charters may also include any preapproved optional provision contained in § 552.4 of this part.

#### Federal Stock Charter

Section 1. Corporate title. The full corporate title of the association is \_ Section 2. Office. The home office shall be located in .

Section 3. Duration. The duration of the

association is perpetual.

Section 4. Purpose and powers. The purpose of the association is to pursue any or all of the lawful objectives of a Federal savings association chartered under section 5 of the Home Owners' Loan Act and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Office of Thrift Supervision

Section 5. Capital stock. The total number of shares of all classes of the capital stock which the association has the authority to issue is all of which shall be common stock of par [or stated] value of \_ share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence

of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the surplus of the association which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for their issuance.

Except for shares issuable in connection with the conversion of the association from the mutual to stock form of capitalization, no shares of common stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any shares of the association which may be issued

Section 7. Directors. The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than seven nor more than fifteen except when a greater number is approved by

the Director of the Office.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is first proposed by the board of directors of the association, then preliminarily approved by the Office, which preliminary approval may be granted by the Office pursuant to regulations specifying preapproved charter amendments, and thereafter approved by the shareholders by a majority of the total votes eligible to be cast at a legal meeting. Any amendment, addition, alteration, change, or repeal so acted upon shall be effective upon filing with the Office in accordance with regulatory procedures or on such other date as the Office may specify in its preliminary approval. Attest:

Secretary of the Association

President or Chief Executive Officer of the Association Attest: Secretary of the Office of Thrift Supervision Director of the Office of Thrift Supervision

#### § 552.4 Charter amendments.

(a) Whenever a Federal stock association whose charter specifies that amendments shall be effective upon filing completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit one signed and two conformed copies of such amendment, along with a certification by the secretary of the association that the amendment is validly authorized and approved, to the District Director, or his or her designee, who shall return to the association a copy of the charter amendment stamped to demonstrate its filing. Such filing shall constitute filing with the Office for purposes of determining the effectiveness of the amendment. A Federal stock association whose charter provides that any amendment shall be effective on the date it receives final approval of the Office shall be deemed to have obtained such final approval on the date it files a copy of the properly adopted amendment with the District Director, or his or her designee, in the manner specified in the first sentence of this paragraph (a).

(b) This section constitutes preliminary approval by the Office of the proposal to shareholders by the board of directors of any Federal stock association of the following amendments to such association's charter, including the adoption of the Federal stock charter as set forth in § 552.3 of this part: Provided, That the association follows the requirements of its charter in adopting the amendments.

(1) A Federal stock association that has complied with § 543.1(b) of this subchapter may amend its charter by substituting a new corporate title in section 1.

(2) A Federal stock association that has complied with § 545.95 of this subchapter may amend its charter by substituting a new home office in

(3) A Federal stock savings and loan association may amend its charter to read in the form of a Federal stock savings bank charter or a Federal stock savings bank may amend its charter to read in the form of a Federal stock savings and loan association charter: Provided, That such association complies with the requirements of § 544.3 of this subchapter.

(4) Amend section 5 of the charter of a Federal stock association to change the number of authorized shares and its number of shares within each class of shares and the par or stated value of such shares.

(5) Amend the charter of a Federal stock association by revising section 5 to read as follows:

Section 5. Capital stock. The total number of shares of all classes of the capital stock

which the association has the authority to shall be of which \_ common stock of par [or stated] value of per share and of which [list the number of each class of preferred and the par or stated value per share of each such class.] The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the association. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the surplus of the association which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for their

Except for shares issuable in connection with the conversion of the association from the mutual to the stock form of capitalization, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors: Provided, That this restriction on voting separately by class or series shall not apply:

(i) To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority

thereof, in the event of default in the payment of dividends on any class or series of

preferred stock;

(ii) To any provision which would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the association with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the association if the preferred stock is exchanged for securities of such other corporation: Provided, That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Office, the Federal Deposit Insurance Corporation, or the Resolution Trust Corporation;

(iii) To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving association in a merger or consolidation for the association, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the association's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. Common stock. Except as provided in this section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the association available for distribution remaining after: (i) Payment or provision for payment of the association's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the association. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. Preferred stock. The association may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different

(a) The distinctive serial designation and the number of shares constituting such series;

(b) The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

(c) The voting powers, full or limited, if

any, of shares of such series;

(d) Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

(e) The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association;

(f) Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

(g) Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the association and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

(h) The price or other consideration for which the shares of such series shall be

issued: and

(i) Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the

limitations set forth in this section and the remainder of this charter, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the association shall file with the Secretary to the Office a dated copy of that supplementary section of this charter established and designating the series and fixing and determining the relative rights and preferences thereof.

(6) Amend the charter of a Federal stock association to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York or American Stock Exchange if the shares were then listed on the New York or American Stock Exchanges.

(7) [Reserved]

(8) Notwithstanding the law of the state in which the association is located, a Federal stock association may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

Section 8. Certain Provisions Applicable for Five Years. Notwithstanding anything contained in the Association's charter or bylaws to the contrary, for a period of [specify number of years up to five] years from the date of completion of the conversion of the Association from mutual to stock form, the following provisions shall apply:

A. Beneficial Ownership Limitation. No person shall directly or indirectly offer to acquire or acquire the beneficial cwnership of more than 10 percent of any class of an equity security of the association. This limitation shall not apply to a transaction in which the association forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of shares by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 574.3(c)(1)(vi) of the Office's regulations.

In the event shares are acquired in violation of this Section 8, all shares beneficially owned by any person in excess of 10% shall be considered "excess shares" and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for

For purposes of this section 8, the following

definitions apply:

(1) The term "person" includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group

formed for the purpose of acquiring, holding or disposing of the equity securities of the association.

(2) The term "offer" includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(3) The term "acquire" includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(4) The term "acting in concert" means (a) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangements, whether written or otherwise.

B. Cumulative Voting Limitation. Stockholders shall not be permitted to cumulate their votes for election of directors.

C. Call for Special Meetings. Special meetings of stockholders relating to changes in control of the association or amendments to its charter shall be called only upon direction of the board of directors.

(c) Anti-takeover provisions. The Office may grant preliminary approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the association shall file as part of its application for preliminary approval an opinion, acceptable to the Office, of counsel independent from the association that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the association is located.

(d) Reissuance of charter. A Federal stock association that has amended its charter may apply to have its charter, including the amendments, reissued by the Office by filing one executed and three conformed copies with the signatures required under § 552.3 of this part with the Office's Senior Deputy Director for Supervision (Operations), and such supporting documents as needed to demonstrate that the amendments were properly adopted. The Director delegates to the Chief Counsel or his or her designee authority to execute on his or her behalf charters submitted for reissuance pursuant to this paragraph (d).

(e) Delegations of authority-(1) Actions by the District Director or his or her designee. The District Director or his or her designee is authorized to grant or deny preliminary approval, in whole or in part, of any application for a charter amendment filed under this section: Provided, that the following conditions

(i) The application does not include proposals that would render more

difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) Appeal. Denial of an application by a District Director pursuant to paragraph (e)(1) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review with the Chief Counsel, addressed to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy of such request to the District Director. The appeal request should include the application for charter amendment as originally filed with the District Director, a copy of the District Director's letter denying preliminary approval of the application, and should indicate the specific reasons why the District Director's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the District Director's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Chief Counsel, the Chief Counsel shall have 60 calendar days to determine whether to approve or deny the appeal. If the Chief Counsel does not approve or deny the appeal request within the 60-day period, the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly

(3) Actions by the Chief Counsel. The Chief Counsel, or his or her designee, is authorized to take the following actions:

(i) Grant or deny, in whole or in part, preliminary approval of any application for a charter amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (e)(2) of this section.

(f) Filing Requirements. Application for preliminary approval of any amendment to the charter of a federal stock association (other than amendments for which preliminary approval is granted pursuant to paragraph (b) of this section) that is eligible to be processed under delegated authority pursuant to paragraph (e) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the District Director or his or her designee. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (e) of this section, then the original and one copy of the proposed amendment should be filed with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy to the District Director or his or her designee.

#### § 552.5 Bylaws.

(a) At its first organizational meeting, the board of directors of a Federal stock association shall adopt a set of bylaws for the administration and regulation of its affairs. Bylaws may be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the association in accordance with the requirements of § 552.6 through 552.6-4 of this part and shall not contain any provision which is inconsistent with those sections or with applicable laws, rules, regulations, or the charter, except that a bylaw inconsistent with §§ 552.6 through 552.6-4 may be adopted with approval of the Office.

(b) Bylaw provisions which adopt the language of the model bylaws set out as an appendix to this part shall be deemed to comply with the requirements of this section.

(c) A copy of all bylaws and amendments thereto shall be filed with the District Director or his or her designee.

(d) Delegations of authority—(1)
Actions by the District Director. The
District Director or his or her designee is
authorized to grant or deny preliminary
approval, in whole or in part, of any
application for a bylaw amendment filed
under this section: Provided, that the
following conditions are met:

(i) The application does not include proposals that would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management; and

(ii) The application does not involve a significant issue of law or policy.

(2) Appeal. Denial of an application by a District Director pursuant to paragraph (d)(l) of this section may be appealed under the following procedures: Within 30 days after notification of the District Director's decision as provided herein, the applicant must file a request for review with the Chief Counsel, addressed to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy of such request to the District Director. The appeal request should include the application for bylaw amendment as originally filed with the District Director or his or her designee, a copy of the District Director's letter denying preliminary approval of the application, and should indicate the specific reasons why the District Director's denial is contended to be erroneous. Failure to file an appeal within the time permitted under this section will constitute a waiver of any objection to the District Director's determination. Upon proper filing of an appeal request, including a complete application, as determined by the Chief Counsel, the Chief Counsel shall have 60 day calendar days to determine whether to approve or deny the appeal. If the Chief Counsel does not approve or deny the appeal request within the 60-day period, the appeal request shall be deemed to be automatically approved following the 60th day after the appeal was properly filed.

(3) Actions by the Chief Counsel. The Chief Counsel, or his or her designee, is authorized to take the following actions:

 (i) Grant or deny, in whole or in part, preliminary approval of any application for a bylaw amendment filed under this section; and

(ii) Approve or deny a request for appeal filed pursuant to paragraph (d)(2) of this section.

(e) Filing Requirements. Application for preliminary approval of any amendment to the bylaws of a federal stock association that is eligible to be processed under delegated authority pursuant to paragraph (d) of this section, shall be made by filing the original and one copy of the proposed amendment, along with a statement regarding eligibility for processing under delegated authority, with the District Director or his or her designee. Such statement should consist of a brief description of the proposed amendment and a statement that such amendment does not:

(1) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the association's stock, or the removal of incumbent management, or

(2) Involve a significant issue of law or policy.

If a proposed amendment is not eligible to be processed under delegated authority pursuant to paragraph (d) of this section, then the original and one copy of the proposed amendment should be filed with the Chief Counsel, Corporate and Securities Division, Officeof Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with a copy to the District Director or his or her designee.

### § 552.6 Shareholders.

(a) Shareholder meetings. An annual meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 120 days after the end of the association's fiscal year. Unless otherwise provided in the association's charter, special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the association. All annual and special meetings of shareholders shall be held at such place as the board of directors may determine in the state in which the association has its principal place of

(b) Notice of shareholder meetings. Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the association as of the record date prescribed in paragraph (c) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(c) Fixing of record date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this

section, such determination shall apply

to any adjournment thereof.

(d) Voting lists. (1) At least 10 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the association shall make a complete list of the shareholders entitled to vote at such meeting, or any adjournments thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder at any time during usual business hours, for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

(2) In lieu of making the shareholders list available for inspection by any shareholders as provided in paragraph (d)(1) of this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a-7 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (17 CFR 240.14a-7) as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the association in performance of the act or acts required.

(e) Shareholder quorum. A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a

quorum.

(f) Shareholder voting—(1) Proxies.

Unless otherwise provided in the association's charter, at all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(2) Shares controlled by association. Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for

purposes of any meeting.

(3) Cumulative voting. Unless otherwise provided in the association's charter, every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

(g) Nominations and new business submitted by shareholders. Nominations for directors and new business submitted by shareholders shall be voted upon at the annual meeting if such nominations or new business are submitted in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Ballots bearing the names of all the persons nominated shall be provided for use at the annual meeting.

§ 552.6-1 Board of directors.

## (a) General powers and duties. The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board

from among its members and shall designate the chairman of the board, when present, to preside at its meeting.

(b) Number and term. The board of directors shall consist of not fewer than seven nor more than fifteen as prescribed in the bylaws. The directors shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

(c) Regular meetings. A regular meeting of the board of directors shall be held immediately after, and at the same place as, the annual meeting of shareholders.

(d) Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Office.

(e) Vacancies. Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

(f) Removal of directors. (1) At a meeting of shareholders called expressly for that purpose, any director may be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(2) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part.

(3) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

(g) Executive and other committees. The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or bylaws of the association, shall have and may exercise all of the authority of the board of directors, except no committee shall have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the association; recommending to the stockholders a plan of merger. consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

(h) Notice of special meetings. Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting. The bylaws may provide for telephonic participation at a

meeting.

(i) Action without a meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors.

(j) Presumption of assent. A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be

entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the association within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such

(k) Age limitation on directors. A federal stock association may provide in its bylaws that no person of an age 70 years or older will be eligible for election, reelection, appointment, or reappointment to the board of directors of the association. The bylaws may also provide that no director shall serve as such beyond the annual meeting of the association immediately following the attainment of the specified age.

## § 552.6-2 Officers.

(a) Positions. The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president shall be a director of the association. The offices of the secretary and treasurer may be held by the same person and vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the offficers shall have such powers and duties as generally pertain to their respective

(b) Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby; but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. Employment contracts shall comfort with § 545.122 of this subchapter.

(c) Age limitation on officers. A federal stock association may provide in its bylaws that no person of an age 70

years or older will be eligible for election, reelection, appointment or reappointment as an officer of the association. The bylaws may also provide that no officer shall serve as such beyond the annual meeting of the association immediately following the attainment of the specified age.

## § 552.6-3 Certificates for shares and their transfer.

(a) Certificates for shares. Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Office. The certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

(b) Transfer of shares. Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the association. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the

owner for all purposes.

## § 552.6-4 Fiscal year; annual audit.

The bylaws of a Federal stock association shall specify the fiscal year for the association. The association

shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the shareholders.

## § 552.7 Description of Federal stock associations.

In the case of a Federal stock association, the words "a capital stock association" or a similar description shall appear conspicuously on any evidence of a savings deposit issued by such association after it amends its

## § 552.8 Savings deposits.

(a) General. A Federal stock association may accept such savings deposits only as are authorized by this section in the form of cash, or of property in which such association is authorized to invest, and, in the absence of actual fraud in the transaction, the value of such property, as determined by the board of directors of such association shall be conclusive. Savings accounts or deposits existing in such association at the time when it amends its charter to read in the form of the charter of a Federal stock association shall be deemed to be such savings deposits subject to the terms and conditions of this section. Any right outstanding at the time of such amendment to receive from the association a savings account or deposit shall thereafter be a right to receive a corresponding savings deposit authorized by this section.

(b) Terms of savings deposits; membership and voting rights. To the extent not inconsistent with this section, savings deposits authorized by this section shall be on the same bases, terms, and conditions and have the same characteristics as if they were authorized by and subject to §§ 545.11 and 545.14. Holders of such savings deposits shall not be members of the association or have voting rights.

(c) Existing bonus rights. To the extent not inconsistent with this section, a Federal stock association which has outstanding bonus agreements shall continue to respect the provisions thereof and distribute bonus payments thereunder.

(d) Status and priority. In the event of voluntary or involuntary liquidation, dissolution, or winding up of the association or in the event of any other situation in which the priority of such savings deposits is in controversy, all such savings deposits shall be debts of the association having the same priority as the claims of general creditors of the

association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association. Such savings deposits shall have no additional right to share in the remaining assets of the association.

(e) Prohibition on the acceptance of share accounts. A Federal stock association shall not accept savings accounts representing share interests in

the association.

(f) Ancillary provisions—(1)
References in regulations. To the extent not inconsistent with the provisions of this section all references in this subchapter to savings accounts (except this section) and to owners, holders, or holders of record of savings accounts shall with respect to savings deposits authorized by this section be applicable in the same manner and to the same extent that they would be applicable if the savings deposits were savings deposits authorized by §§ 545.11 and 545.14.

(2) Forms of certificate. Except as the Director may otherwise provide, a Federal stock association shall use for savings deposits authorized by this section a form of certificate which may be used for a corresponding savings deposit authorized under §§ 545.11 and 545.14. However, the form shall be modified to eliminate any language referring to:

(i) Dividends,

(ii) Membership or voting rights, and

(iii) Any right to share upon liquidation in assets of the association, other than in the capacity of a general creditor.

(3) Applicability of certain matters to savings deposits. If there is outstanding at the time an association becomes a Federal stock association a determination, notice, or other action by the association or its board of directors which would be effective as to savings accounts or deposits thereafter opened if such association were not a Federal stock association, such determination, notice, or other action shall be deemed to be applicable to savings deposits of such association in the same manner and to the same extent as if such savings deposits were savings accounts or deposits issued under its prior

(4) Reporting requirements. In any report required by this subchapter or by any other requirement imposed by the Office, a savings deposit authorized by this section in a Federal stock association may be included in any category in which it could properly be included if it were a corresponding savings account or deposit issued under the prior charter of such association.

#### § 552.9 [Reserved]

## § 552.10 Annual reports to stockholders.

A Federal stock association not wholly owned by a holding company shall, within ninety days after the end of its fiscal year, mail to each of its stockholders entitled to vote at its annual meeting an annual report containing financial statements which satisfy the requirements of Rule 14a-3 (17 CFR 240.14a-3) under the Securities Exchange Act of 1934. Concurrently with such mailing a certification of such mailing signed by the chairman of the board, the president or a vice president of the association, together with five copies of the report, shall be transmitted by the association to the District Director or his or her designee.

### § 552.11 Books and records.

(a) Each Federal stock association shall keep correct and complete books and records of account; shall keep minutes of the proceedings of its stockholders, board of directors, and committees of directors; and shall keep at its home office or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number, class and series, if any, of the shares held by each.

(b) Any stockholder or group of stockholders of a Federal stock association, holding of record the number of voting shares of such association specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

(1) Voting shares having a cost of not less than \$100,000 or constituting not less than one percent of the total outstanding voting shares, provided in either case such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand, or

(2) Not less than five percent of the total outstanding voting shares.

No stockholder or group of stockholders of a Federal stock association shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders, except as provided in its bylaws with respect to inspection of a list of stockholders.

(c) The right to examination authorized by paragraph (b) of this section and the right to inspect the list of stockholders provided by a Federal stock association's bylaws may be denied to any stockholder or group of stockholders upon the refusal of any such stockholder or group of stockholders to furnish such association, its transfer agent or registrar an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the association, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the association or of any other corporation, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering for sale

(d) Notwithstanding any provision of this section or common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a Federal stock association

containing:

(1) A list of depositors in or borrowers from such association;

(2) Their addresses:

(3) Individual deposit or loan balances or records; or

(4) Any data from which such information could be reasonably constructed.

#### § 552.12 [Reserved]

#### § 552.13 Combinations involving Federal stock associations.

(a) Scope and authority. Federal stock associations may enter into combinations only in accordance with the provisions of this section, section 18(c) of the Federal Deposit Insurance Act, section 5(d)(3)(A) of the Home Owners' Loan Act, and § 563.22 of this

(b) Definitions. The following definitions apply to §§ 552.13 and 552.14

of this part:

(1) Association. "Association" means a Federal savings association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan, or homestead association or a cooperative bank (other than a cooperative bank that falls within 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the

deposits of which are insured by the Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association.

(2) Bulk purchase of assets. A transfer of all or substantially all the assets and may include the assumption of all or substantially all the liabilities of an association or a depository institution to or from a Federal stock association.

(3) Consolidation. Fusion of two or more associations into a newly-created association having the combined powers and rights of all its constituents.

(4) Constituent association. Resulting

or disappearing association.

(5) Depository institution. Any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.

(6) Disappearing association. An association whose corporate existence does not continue after a merger or consolidation effected under this

section.

(7) Merger. Uniting two or more associations by the transfer of all property rights and franchises to the resulting association, which retains its corporate identity.

(8) Mutual association. Any association organized in a form not requiring nonwithdrawable stock under

Federal or State law.

(9) Resulting association. An association whose corporate existence continues after a merger, or the association resulting from a consolidation of two or more associations.

(10) State. Includes the District of Columbia, Commonwealth of Puerto Rico, and States, territories, and possessions of the United States.

(11) Stock association. Any association organized in a form requiring nonwithdrawable stock.

(c) Forms of combination. Federal stock associations may combine in the following ways:

(1) Mergers: Provided, That: (i) All constituent associations Federal savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation are savings associations whose accounts are insured by the Federal

Deposit Insurance Corporation, and (ii) If any constituent is a mutual association, the resulting association shall be mutually held, except in cases involving supervisory mergers, mergers approved under part 563b of subchapter D or mergers in which one of the constituents is an interim Federal savings association or an interim state association.

(2) Consolidations among Federal savings associations resulting in Federal mutual associations.

(3) Bulk purchases of assets and/or assumptions of deposit liabilities: Provided, That:

(i) The resulting Federal savings association meets the requirements for Federal Home Loan Bank membership

and insurance of accounts;

(ii) The resulting Federal savings association conforms, within the time prescribed by the Director, or any person(s) who have delegated authority to approve the purchase on behalf of the Director, to the requirements of section 5(c) of the Home Owners' Loan Act; and

(iii) The transferor is not a mutual

savings association.

(d) Office approval. Prior written approval of the Office is required for every combination. In determining whether to confer such approval, the Office shall apply the criteria set out in § 571.5 of this chapter and shall impose any conditions it deems necessary or appropriate to ensure compliance with those criteria and the requirements of this chapter.

(e) Approval of board of directors. Before filing for Office approval, the combination shall be approved by each constituent association's board of

(1) By a two-thirds vote of the entire board of each Federal savings association, and

(2) As required by state law, for other constituents.

(f) Combination agreement. (1) All terms, conditions, agreements or understandings, or other provisions with respect to the combination, shall be set forth fully in a written combination agreement.

(2) The combination agreement shall

state:

(i) That the combination shall not be effective unless and until approved by the Office;

(ii) Which constituent association is to be the resulting association;

(iii) The name of the resulting association;

(iv) The location of the home office and any other offices of the resulting association:

(v) The terms and conditions of the combination and method of effectuation;

(vi) Any charter amendments, or the new charter in the consolidation;

(vii) The manner of converting or exchanging the stock of each constituent association into stock, savings accounts, or other securities of the resulting association or cash, property, rights, or securities of any other entity in connection with the combination:

(viii) The basis upon which the savings accounts of the resulting association shall be issued;

(ix) The number, names and residence addresses, and terms of directors;

(x) The effect upon and assumption of any liquidation account of a disappearing association by the resulting association; and

(xi) Such other provisions, agreements, or understandings as relate

to the combination.

(g) Processing of an application under this section shall follow the procedures set forth in § 563.22(c) through (h) of this

chapter.

(h) Approval by stockholders—(1) General rule. Except as otherwise provided in this section, an affirmative vote of two-thirds of the outstanding voting stock shall be required for approval of the combination agreement. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this part, an affirmative vote of a majority of the shares of each voting class and two-thirds of the total voting shares shall be required. The required votes shall be taken at a meeting of the association.

(2) General exception. Stockholders of the resulting association need not authorize a combination agreement if:

(i) It does not involve an interim Federal savings association or an interim state savings association;

(ii) The association's charter is not

changed;

(iii) Each share of stock outstanding immediately prior to the effective date of the combination is to be an identical outstanding share or a treasury share of the resulting association after such effective date; and

(iv) Either:

(A) No shares of voting stock of the resulting association and no securities convertible into such stock are to be issued or delivered under the plan of

combination or

(B) The authorized unissued shares or the treasury shares of voting stock of the resulting association to be issued or delivered under the plan of combination, plus those initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15% of the total shares of voting stock of such association outstanding immediately prior to the effective date of the combination.

(3) Exceptions for certain combinations involving an interim

association. Stockholders of a Federal stock association need not authorize by a two-thirds affirmative vote combinations involving an interim Federal savings association or interim state savings association when the resulting Federal stock association is acquired pursuant to § 574.7(a)(2) of this chapter. In those cases, an affirmative vote of 50 percent of the shares of the outstanding voting stock of the Federal stock association plus one affirmative vote shall be required. If any class of shares is entitled to vote as a class pursuant to § 552.4 of this part, an affirmative vote of 50 percent of the shares of each voting class plus one affirmative vote shall be required. The required votes shall be taken at a meeting of the association.

(i) Disclosure. The Director, or any person(s) who have delegated authority to approve a combination on behalf of the Director, may require, in connection with a combination under this section, such disclosure of information as he or she deems necessary or desirable for the protection of investors in any of the

constituent associations.

(j) Articles of combination. (1)
Following stockholder approval, articles of combination shall be executed in duplicate by each association, by its chief executive officer or executive vice president and by its secretary or an assistant secretary, and verified by one of the officers of each association signing such articles, and shall set forth:

(i) The plan of combination; (ii) The number of shares outstanding

in each association; and

(iii) The number of shares in each association voted for and against such plan.

(2) Both sets of articles of combination shall be filed with the Secretary of the Office which shall, if it finds that such articles conform to the requirements of this regulation, endorse the articles and return one set to the resulting

association.

(k) Effective date. No combination under this section shall be effective until approved by the Office. The effective date of a combination in which the resulting association is a Federal stock association shall be the date of consummation of the transaction or such other later date specified on the endorsement of the articles of combination by the Secretary of the Office. The effective date of a combination in which the resulting association is not a Federal savings association shall be a date subsequent to Office approval prescribed by the law of the state under which the resulting association is chartered. If a disappearing association combining

under this section is a Federal stock association, its charter shall be deemed to be cancelled as of the effective date of the combination; such charter shall be surrendered to the Office at the time of filing of the articles of combination.

(1) Mergers and consolidations: transfer of assets and liabilities to resulting association. Upon the effective date of merger or consolidation under this section, if the resulting association is a Federal savings association, all assets and property (real, personal, and mixed, tangible and intangible, choses in action, rights, and credits) then owned by each constituent association or which would inure to any of them, shall immediately by operation of law and without any conveyance, transfer, or further action, become the property of the resulting association. The resulting association shall be deemed to be a continuation of the entity of each constituent association, the rights and obligations of which shall succeed to such rights and obligations and the duties and liabilities connected therewith.

(m) All references to the Office in this section shall be read to include its delegates under § 563.22(f) of this chapter, the District Directors and the Senior deputy Director of the Supervision (Operations) and the Chief Counsel, and their respective designees.

## § 552.14 Dissenter and appraisal rights.

(a) Right to demand payment of fair or appraised value. Except as provided in paragraph (b) of this section, any stockholder of a Federal stock association combining in accordance with § 552.13 of this part shall have the right to demand payment of the fair or appraised value of his stock: Provided, That such stockholder has not voted in favor of the combination and complies with the provisions of paragraph (c) of this section.

(b) Exceptions. No stockholder required to accept only qualified consideration for his or her stock shall have the right under this section to demand payment of the stock's fair or appraised value, if such stock was listed on a national securities exchange or quoted on the National Association of Securities Dealers' Automated Quotation System ("NASDAQ") on the date of the meeting at which the combination was acted upon or stockholder action is not required for a combination made pursuant to § 552.13(h)(2) of this part. "Qualified consideration" means cash, shares of stock of any association or corporation which at the effective date of the combination will be listed on a national

securities exchange or quoted on NASDAQ, or any combination of such

shares of stock and cash.

(c) Procedure-(1) Notice. Each constituent Federal stock association shall notify all stockholders entitled to rights under this section, not less than twenty days prior to the meeting at which the combination agreement is to be submitted for stockholder approval, of the right to demand payment of appraised value of shares, and shall include in such notice a copy of this section. Such written notice shall be mailed to stockholders of record and may be part of management's proxy solicitation for such meeting.

(2) Demand for appraisal and payment. Each stockholder electing to make a demand under this section shall deliver to the Federal stock association, before voting on the combination, a writing identifying himself or herself and stating his or her intention thereby to demand appraisal of and payment for his or her shares. Such demand must be in addition to and separate from any proxy or vote against the combination

by the stockholder.

(3) Notification of effective date and written offer. Within ten days after the effective date of the combination, the

resulting association shall:

(i) Give written notice by mail to stockholders of constituent Federal stock associations who have complied with the provisions of paragraph (c)(2) of this section and have not voted in favor of the combination, of the effective date of the combination;

(ii) Make a written offer to each stockholder to pay for dissenting shares at a specified price deemed by the resulting association to be the fair value

thereof; and

(iii) Inform them that, within sixty days of such date, the respective requirements of paragraphs (c)(5) and (c)(6) of this section (set out in the

notice) must be satisfied.

The notice and offer shall be accompanied by a balance sheet and statement of income of the association the shares of which the dissenting stockholder holds, for a fiscal year ending not more than sixteen months before the date of notice and offer, together with the latest available interim financial statements.

(4) Acceptance of offer. If within sixty days of the effective date of the combination the fair value is agreed upon between the resulting association and any stockholder who has complied with the provisions of paragraph (c)(2) of this section, payment therefor shall be made within ninety days of the effective date of the combination.

(5) Petition to be filed if offer not accepted. If within sixty days of the effective date of the combination the resulting association and any stockholder who has complied with the provisions of paragraph (c)(2) of this section do not agree as to the fair value, then any such stockholder may file a petition with the Office, with a copy by registered or certified mail to the resulting association, demanding a determination of the fair market value of the stock of all such stockholders. A stockholder entitled to file a petition under this section who fails to file such petition within sixty days of the effective date of the combination shall be deemed to have accepted the terms offered under the combination.

(6) Stock certificates to be noted. Within sixty days of the effective date of the combination, each stockholder demanding appraisal and payment under this section shall submit to the transfer agent his certificates of stock for notation thereon that an appraisal and payment have been demanded with respect to such stock and that appraisal proceedings are pending. Any stockholder who fails to submit his or her stock certificates for such notation shall no longer be entitled to appraisal rights under this section and shall be deemed to have accepted the terms offered under the combination.

(7) Withdrawal of demand. Notwithstanding the foregoing, at any time within sixty days after the effective date of the combination, any stockholder shall have the right to withdraw his or her demand for appraisal and to accept the terms offered upon the combination.

(8) Valuation and payment. The Director shall, as he or she may elect, either appoint one or more independent persons or direct appropriate staff of the Office to appraise the shares to determine their fair market value, as of the effective date of the combination, exclusive of any element of value arising from the accomplishment or expectation of the combination. Appropriate staff of the Office shall review and provide an opinion on appraisals prepared by independent persons as to the suitability of the appraisal methodology and the adequacy of the analysis and supportive data. The Director after consideration of the appraisal report and the advice of the appropriate staff shall, if he or she concurs in the valuation of the shares. direct payment by the resulting association of the appraised fair market value of the shares, upon surrender of the certificates representing such stock.

Payment shall be made, together with interest from the effective date of the combination, at a rate deemed equitable by the Director.

(9) Costs and expenses. The costs and expenses of any proceeding under this section may be apportioned and assessed by the Director as he or she may deem equitable against all or some of the parties. In making this determination the Director shall consider whether any party has acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section.

(10) Voting and distribution. Any stockholder who has demanded appraisal rights as provided in paragraph (c)(2) of this section shall thereafter neither be entitled to vote such stock for any purpose nor be entitled to the payment of dividends or other distributions on the stock (except dividends or other distribution payable to, or a vote to be taken by stockholders of record at a date which is on or prior to, the effective date of the combination): Provided, That if any stockholder becomes unentitled to appraisal and payment of appraised value with respect to such stock and accepts or is deemed to have accepted the terms offered upon the combination, such stockholder shall thereupon be entitled to vote and receive the distributions described above.

(11) Status. Shares of the resulting association into which shares of the stockholders demanding appraisal rights would have been converted or exchanged, had they assented to the combination, shall have the status of authorized and unissued shares of the resulting association.

## § 552.15 Supervisory combinations.

Notwithstanding the foregoing provisions of this part, the Director of the Office may waive or deem inapplicable any provision of § 552.13 or § 552.14 of this part if he or she determines that grounds exist, or may imminently exist, for appointment of a conservator or receiver for an association under subsection 5(d) of the Home Owners' Loan Act.

## § 552.16 Effect of subsequent charter or bylaw change.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect.

## Appendix to Part 552-Model Bylaws for Stock Associations

Article I-Home Office

The home office of the association shall be in the County of\_ . in the State of

#### Article II-Shareholders

Section 1. Place of Meetings. All annual and special meetings of shareholders shall be held at the home office of the association or at such other place in the State in which the principal place of business of the association is located as the board of directors may determine.

Section 2. Annual Meeting. A meeting of the shareholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 120 days after the end of the association's fiscal year on the of if not a legal holiday. and if a legal holiday, then on the next day following which is not a legal holiday, at or at such other date and time within such 120-day period as the board of directors may determine.

Section 3. Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Office of Thrift Supervision ("Office"), may be called at any time by the chairman of the board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the outstanding capital stock of the association entitled to vote at the meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the association addressed to the chairman of the board, the president, or the secretary.

Section 4. Conduct of Meetings. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Office or these bylaws. The board of directors shall designate, when present, either the chairman of the board or president to preside at such meetings.

Section 5. Notice of Meetings. Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be delivered not fewer than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, or the secretary, or the directors calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address as it appears on the stock transfer books or records of the association as of the record date prescribed in Section 6 of this Article II with postage prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It

shall not be necessary to give any notice of the time and place of any meeting adjourned for less than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or eny adjournment, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not fewer than 10 days prior to the date on which the particular action, requiring such determination of shareholders. is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment.

Section 7. Voting Lists. At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the association shall make a complete list of the shareholders entitled to vote at such meeting, or any adjournment, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the association and shall be subject to inspection by any shareholder at any time during usual business hours for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any shareholder during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. In lieu of making the shareholder list available for inspection by shareholders as provided in the preceding paragraph, the board of directors may elect to follow the procedures prescribed in § 552.6(d) of the Office's regulations as now or hereafter in effect.

Section 8. Quorum. A majority of the outstanding shares of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If less than a majority of the outstanding shares is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to constitute less than a quorum.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his or her duly authorized attorney in

fact. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

Section 10. Voting of Shares in the Name of Two or More Persons. When ownership stands in the name of two or more persons, in the absence of written directions to the association to the contrary, at any meeting of the shareholders of the association any one or more of such shareholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by any officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer. of such shares into his or her name. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer into his or her name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Neither treasury shares of its own stock held by the association nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the association, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

Section 12. Cumulative Voting. Every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected

multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

Section 13. Inspectors of Election. In advance of any meeting of shareholders, the board of directors may appoint any person other than nominees for office as inspectors of election to act at such meeting or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes represented at the meeting shall, make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president.

Unless otherwise prescribed by regulations of the Office, the duties of such inspectors shall include: determining the number of shares and the voting power of each share, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the rights to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

Section 14. Nominating Committee. The board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by shareholders are made in writing and delivered to the secretary of the association at least five days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. Ballots bearing the names of all persons nominated by the nominating committee and by shareholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any shareholder entitled to vote and shall be voted upon.

Section 15. New Business. Any new business to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the association at least five days before the date of the annual meeting, and all

business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any shareholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least five days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the shareholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

Section 16. Informal Action by
Shareholders. Any action required to be
taken at a meeting of the shareholders, or any
other action which may be taken at a meeting
of shareholders, may be taken without a
meeting if consent in writing, setting forth the
action so taken, shall be given by all of the
shareholders entitled to vote with respect to
the subject matter.

#### Article III-Board of Directors

Section 1. General Powers. The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. Number and Term. The board of directors shall consist of members and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, within the association's normal lending territory, for the holding of additional regular meetings without other notice than such resolution.

Section 4. Qualification. Each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the association unless the association is a wholly owned subsidiary of a holding company.

Section 5. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors, may fix any place, within the association's normal lending territory, as the place for holding any special meeting of the board of directors called by such persons.

Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person but shall not constitute attendance for the purpose of compensation pursuant to Section 12 of this Article.

Section 6. Notice. Written notice of any special meeting shall be given to each director at least two days prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed or when delivered to the telegraph company if sent by telegram. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by Section 5 of this Article III.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Office or by these bylaws.

Section 9. Action Without a Meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Resignation. Any director may resign at any time by sending a written notice of such resignation to the home office of the association addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. Vacancies. Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the

board of directors for a term of office continuing only until the next election of directors by the shareholders.

Section 12. Compensation. Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for actual attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed such compensation for actual attendance at committee meetings as the board of directors may determine.

Section 13. Presumption of Assent. A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless he or she shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the association within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. Removal of Directors. At a meeting of shareholders called expressly for that purpose, any director may be removed for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this selection shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Article IV-Executive and Other Committees

Section 1. Appointment. The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. Authority. The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the

association, or recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. Tenure. Subject to the provisions of Section 8 of this Article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his or her designation and until a successor is designated as a member of the executive committee.

Section 4. Meetings. Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. Quorum. A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. Action Without a Meeting. Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee.

Section 7. Vacancies. Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the full board of directors.

Section 8. Resignations and Removal. Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the full board of directors. Any member of the executive committee may resign from the executive committee at any time by giving written notice to the president or secretary of the association. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective.

Section 9. Procedure. The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. Other Committees. The board of directors may by resolution establish an audit, loan, or other committee composed of directors as they may determine to be necessary or appropriate for the conduct of the business of the association and may prescribe the duties, constitution, and procedures thereof.

Article V-Officers

Section 1. Positions. The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president shall be a director of the association. The offices of the secretary and treasurer may be held by the same person and a vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. Election and Term of Office. The officers of the association shall be elected annually at the first meeting of the board of directors held after each annual meeting of the stockholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner hereinafter provided. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the association to enter into an employment contract with any officer in accordance with regulations of the Office; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with Section 3 of this Article V.

Section 3. Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. Remuneration. The remuneration of the officers shall be fixed from time to time by the board of directors.

Section 1. Contracts. To the extent permitted by regulations of the Office, and except as otherwise prescribed by these bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the association. Such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the association and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks; Drafts. etc. All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the association shall be signed by one or more officers, employees or agents of the association in such manner as shall from time to time be determined by the board of directors.

Section 4. Deposits. All funds of the association not otherwise employed shall be deposited from time to time to the credit of the association in any duly authorized depositories as the board of directors may releast.

Article VII—Certificates for Shares and Their Transfer

Section 1. Certificates for Shares. Certificates representing shares of capital stock of the association shall be in such form as shall be determined by the board of directors and approved by the Office. Such certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares has been surrendered and cancelled, except that in the case of a lost or destroyed certificate, a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfer of

Section 2. Transfer of Shares. Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by his or her legal representative, who shall furnish proper evidence of such authority, or by his or her attorney authorized by a duly executed power of attorney and filed with the

association. Such transfer shall be made only on surrender for cancellation of the certificate for such shares. The person in whose name shares of capital stock stand on the books of the association shall be deemed by the association to be the owner for all purposes.

Article VIII-Fiscal Year; Annual Audit

The fiscal year of the association shall end on the \_\_\_\_\_ of \_\_\_ of each year. The association shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the shareholders.

## Article IX—Dividends

Subject to the terms of the association's charter and the regulations and orders of the Office, the board of directors may, from time to time, declare, and the association may pay, dividends on its outstanding shares of capital stock.

## Article X-Corporate Seal

The board of directors shall provide an association seal which shall be two concentric circles between which shall be the name of the association. The year of incorporation or an emblem may appear in the center.

### Article XI-Amendments

These bylaws may be amended in a manner consistent with regulations of the Office at any time by a majority vote of the full board of directors or by a majority vote of the votes cast by the stockholders of the association at any legal meeting.

## PART 556—STATEMENTS OF POLICY

Sec.

556.1 Directors.

556.2 Power to engage in escrow business.

556.3 Real estate.

556.4 Insurance.

556.5 Establishment of branch offices.

556.6 Savings accounts.

556.7 Service corporation secured debt limitation.

556.8 Suretyship.

556.9 Imposition of late charges and due-onsale clauses.

556.10 First liens on properties sole by the Secretary of HUD.

556.11 Prepayment penalty on mortgage loans.

556.12 Deposit assurance of direct deposit of social security payments.

556.13 Receipt of interest expressed as a percentage of other income.

556.14 Chief executive officer of a branch office.

556.15 Drive-in and pedestrian facilities.
556.16 Insurance agencies—usurpation of corporate opportunities.

556.17 Effect of loan participation on status of borrowing members.

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 96 Stat. 1505, as amended, (12 U.S.C. 1701j-3); secs.

902-920, as added by sec. 2001, 92 Stat. 3728-3741, as amended (15 U.S.C. 1693-1693r).

## § 556.1 Directors.

(a) Number necessary for quorum. If the number of directors provided for in the bylaws or fixed by resolution of the members has been elected, a majority of that number constitutes a quorum, regardless of any subsequent reduction in the number of directors actually serving. An increase in the authorized number of directors does not affect the number required for a quorum until the newly created directorships are filled.

(b) Directors' powers to fill vacancies. The board of directors of a Federal mutual savings association which has the prescribed bylaws may, without calling a special meeting of the members, elect directors to fill vacancies, including vacancies caused by resignation or by increase in the number of directors, unless the number was increased by a vote of the members and they elected directors to fill the new positions. Each directors so elected by the board of directors shall serve until the next annual meeting of members.

# § 556.2 Power to engage in escrow business.

A Federal savings association may not act generally as an agent for the public in handling escrows. It may, however, handle escrows relating to real estate loans it makes and, to the extent reasonably incidental to accomplishing its express purposes, may handle escrows for others involving the type of real estate transactions common to the savings association business. In handling any escrow, it may not assume duties or responsibilities or perform acts beyond its power under the Act, these regulations, or its charter.

#### § 556.3 Real estate.

(a) For lending purposes, a motel is generally considered "improved nonresidential real estate." However, if the business use (tourist units) is merely incidental to its use as the borrower's residence, it qualifies as combination home and business property.

(b) Purchase of paving certificates. A Federal savings association may purchase a paving certificate which constitutes a lien on property securing an association loan, if necessary to protect its interest in the property. However, it may not acquire such a certificate as an investment or as to property on which it does not have a mortgage.

### § 556.4 Insurance.

A Federal savings association's board of directors has the duty to establish

and maintain such requirements over hazard insurance as it considers necessary to protect the Federal savings association's interest in real estate security for its loans. The requirements may include establishment of fair standards based on such factors as recognized financial ratings of insurers and coverage forms, but such standards may not be based on the insurer's corporate structure. Subject to this limitation, the borrower should have reasonable freedom of choice in placing hazard insurance on the real estate security.

### § 556.5 Establishment of branch offices.

(a) General. (1) The Office encourages a competitive savings association system that provides choices of facilities for improved financial services to the public. The Office believes that branching is a primary means to increase competition and serve the public. The Office recognizes that establishment of a full service branch is only one means for improving service and competition in an area and, therefore, encourages innovative ideas for branches designed to suit the needs of a particular community.

(2) As a general policy, the Office permits a Federal savings association to branch within the state in which its home office is located, except as provided in paragraph (a)(4) of this

section.

(3)(i)(A)(1) Additionally, the Office will permit a Federal savings association to establish or operate a branch office in a state other than the state in which its home office is located if the law of the state in which a Federal savings association's home office is located and the law of the state in which the branch is to be located would permit the establishment of such branch if the Federal savings association were a savings association chartered by the state in which the Federal savings association's home office is located, except as provided in paragraph (a)(4) of this section.

(2) For the purposes of paragraph (a)(3)(i)(A) of this section, state law is employed to determine basic authority to branch, or to acquire branch offices by merger or acquisition of assets or liabilities, but authorization by a state official is not required, and other state law limitations or requirements, such as those concerning investment standards,

do not apply.

(3) Paragraph (a)(3)(i)(A) of this section does not authorize a Federal savings association to become a savings and loan holding company controlling a savings association located in a state other than the state in which the Federal savings association's home office is located, if such an acquisition would not be permitted for state-chartered savings associations located in the respective

(B) For the purposes of paragraph (a)(3) of this section, the home office of a Federal savings association shall be deemed to be its home office as of the later of the date of its chartering or December 20, 1985, unless a savings association clearly demonstrates to the satisfaction of the Office that relocation to another state was not effected primarily to obtain branching advantages under this § 556.5(a).

(C) If a Federal savings association is a holding company or a subsidiary of a savings association that is a holding company, it shall have a home office for the purposes of paragraph (a)(3)(i) of this section only if no other savings association in its holding company structure exercises or has exercised branching rights described in paragraph

(a)(3)(i)(A) of this section.

(D) If a Federal savings association is an ultimate parent holding company, and no state chartered savings association in the holding company structure exercises or has exercised branching rights described in paragraph (a)(3)(i)(A) of this section, such ultimate parent holding company shall be the sole association in the holding company structure that may acquire such branching rights under paragraph (a)(3)(i)(A) of this section. For the purposes of paragraph (a)(3)(i) of this section, "ultimate parent holding company" means a savings and loan holding company not controlled by another company.

(E) Multiple holding companies. A Federal savings association that is a subsidiary of a multiple savings and loan holding company that controls savings associations located in more than one state shall have a home office for the purposes of paragraph (a)(3)(i) of this section only if no other subsidiary savings association of its holding company exercises or has exercised branching rights described in paragraph

(a)(3)(i)(A) of this section.

(F) A Federal savings association that acquires and exercises branching rights pursuant to any of paragraphs (a)(3)(i)(A) through (a)(3)(i)(E) of this section may not operate or retain branches established pursuant to such exercise if another savings association in its holding company structure exercises branching rights described in paragraph (a)(3)(i)(A) of this section.

(ii)(A) Notwithstanding the limitations of paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners' Loan Act of 1933, as amended,

the Office may approve the establishment or operation of a branch office by a Federal savings association in a state other than the state in which its home office is located; provided That:

(1) The establishment of the branch office will be achieved as part of or as a result of a transaction in which assets or liabilities of a savings association in default or in danger of default ("target association") are acquired by another association, by merger or otherwise, as part of a transaction in which the insured accounts of a target association are assumed by and transferred to a savings association as a means of payment of insurance by the Federal Deposit Insurance Corporation ("FDIC") or the Resolution Trust Corporation ("RTC"), or pursuant to an action by the Office, the FDIC or the RTC to prevent the default of a target association;

(2) The Office determines (for this purpose, the Office may accept a certification from the FDIC or the RTC) that the potential cost to the FDIC or the RTC will be reduced as a result of the transaction involving a target

association; and

(3) If any alternative has been submitted that is not objectionable on supervisory grounds and could be approved in accordance with paragraph (a)(2), (a)(3)(i), or (a)(3)(iii) of this section or that would involve an acquisition by, or transfer of accounts to, a state chartered association and would be in accordance with the laws governing the chartering and operation of all parties to the transaction, the Office determines (for this purpose, the Office may accept a certification from the FDIC or RTC) that the potential cost to the FDIC or the RTC resulting from the proposed interstate acquisition by, or transfer of accounts to, a Federal savings association under paragraph (a)(3)(ii) of this section will be substantially less than the liability that would result from such other alternative.

(B) Branching approved or permitted pursuant to paragraph (a)(3)(ii) of this

section may be:

(1) Operation of a former office or offices of a target association; and

(2) Permission to establish branch offices in a state or states other than the state or states in which a target association operates: Provided That branching rights permitted pursuant to this paragraph (a)(3)(ii)(B)(2) shall not in any event include any state in addition to the greater of (i) three states in addition to the state or states in which the target association operates, or (ii) if the home office of the target association is located in a state that, as of the date of acquisition of the target association,

is included in a regional compact of states specifically authorizing branching or acquisition across state lines by associations of the savings and loan or savings bank type by statute laws of such states, by language to that effect and not merely by implication, the states included within such a regional compact: Provided further, That the Office shall give preference to an application seeking limited branching authority over an application seeking wider branching capacity under paragraphs (a)(3)(ii)(B)(1) and (a)(3)(ii)(B)(2) of this section; Provided further, That in considering applications to approve transactions involving the exercise of authority under this paragraph (a)(3)(ii)(B)(2), the Office shall prefer an application involving branching in states within a regional compact for associations of the savings and loan or savings bank type or in a state having boundary lines contiguous with boundary lines of the state in which the target association's home office is located; and Provided further, That no application for branching capacity under this paragraph (a)(3)(ii)(B)(2) shall be approved unless the Office finds that such branching capacity is reasonably related to the office structure of the applicant, before or after acquisition of the target association or its assets or liabilities, and the Office determines (for this purpose, the Office may accept a certification from the FDIC or RTC) that an acquisition effected pursuant to such application is of very substantial benefit to the FDIC or the RTC in a measure sufficient to constitute a compelling factor in determining to make an award to the applicant.

(C) The principles of paragraph
(a)(3)(ii) of this section shall also apply in reverse mergers in which the target association is the surviving entity and in the acquisition of control of subsidiary savings associations in a state or states in which a Federal savings association is not authorized to branch pursuant to paragraph (a)(3)(i) of this section.

(iii) Notwithstanding paragraph
(a)(3)(i) of this section, but subject to section 5(r) of the Home Owners Loan Act of 1933, as amended, the Office may approve the establishment of a branch office in a state or states other than the state in which the home office is located, provided that the establishment of the branch office will be achieved by the consolidation of some or all of the savings association subsidiaries, or of some or all of the offices of the savings association subsidiaries, of a multiple savings and loan holding company. The Office may approve the establishment of

a branch office by a resulting association in any state or states in which it maintains branch offices as a result of the consolidation.

(iv) Notwithstanding paragraph
(a)(3)(i) of this section, but subject to
section 5(r) of the Home Owners' Loan
Act of 1933, as amended, in a
transaction not involving an action by
the FDIC or the RTC for transfer of
accounts or to prevent the default of a
savings association, the Office may
approve the establishment of a branch
office in any state in which the applicant
has established or has been permitted to
operate a branch office pursuant to the
conditions set forth in paragraph
(a)(3)(ii) of this section.

(v) Notwithstanding paragraph (a)(3)(i) of this section, but subject to section 5(r) of the Home Owners' Loan Act of 1933, as amended, the Office may approve the establishment of branches in either Maryland or Virginia, but not both, by an association whose home office is located in the District of Columbia; Provided, That the association may establish branches on a nonsupervisory basis in Maryland or Virginia (excluding any grandfathered branches) under any other paragraph of this section other than (a)(3)(ii), unless those branching rights were acquired under paragraph (a)(3)(iv) of this section as a result of a supervisory transaction approved in 1985, such association may not branch into the other state solely pursuant to this paragraph (a)(3)(v); and Provided, further, That the association has informed the District Director or his or her designee in writing of its chosen state for future branching within 180 days after June 2, 1986 or at the time of obtaining its Federal charter, which choice may not be changed by the association after it has made its election to branch in that state; and Provided further. That the Office generally will not approve a branch under this paragraph (a)(3)(v) if the association's eligibility for approval of the branch under this paragraph (a)(3)(v) would result from a change in the location of the association's home office.

(vi) Notwithstanding paragraph
(a)(3)(i) of this section, but subject to
section 5(r) of the Home Owners' Loan
Act of 1933, as amended, the Office may
approve the establishment of branches
in the District of Columbia by an
association whose home office is
located in Maryland or Virginia:
Provided, That the Office generally will
not approve a branch under this
paragraph (a)(3)(vi) if the branch's
eligibility for approval under this
paragraph (a)(3)(vi) would result from a

change in the location of the association's home office.

(4)(i) A savings association eligible for assistance under section 13(c) of the Federal Deposit Insurance Act that is acquired by a bank holding company or a bank pursuant to section 13(k) of the Federal Deposit Insurance Act (or a savings association acquired by a bank holding company or bank pursuant to section 408(m) of the National Housing Act as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) may retain and continue to operate any branch or related facilities in operation prior to acquisition by such bank holding company. If such savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association not affiliated with a bank holding company located in the same state.

(ii) Notwithstanding the foregoing, if such savings association does not have its home office located in the same state as the home office(s) of the bank subsidiary(ies) of the holding company, and if the association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, as amended, or does not meet the asset composition test of subparagraph (C) thereof, then such savings association shall be subject to the conditions upon which a bank in the state where the association's home office is located may retain, operate and establish branches.

(b) Supervisory clearance.—(1)
General. The branching regulations
recognize that the decision to branch is
a management prerogative. However, in
granting supervisory clearance to an
applicant, the Office will consider
whether the overall policies, condition,
and operation of the applicant are
satisfactory and, as a whole, afford no
bases for supervisory objection. Where
the overall condition of the applicant is
satisfactory, the Office in its discretion
may waive any specific supervisory
objection and approve the branch
application.

(2) Regulatory capital. (i) For purposes of supervisory clearance, an association's regulatory capital should equal the minimum requirements established by law and applicable regulations of the Office.

(ii) Exception. If an applicant fails to meet any of the regulatory capital criteria, the District Director or his or her designee will not grant supervisory clearance unless he or she finds that:

(A) The existing level of regulatory capital and recent operating results are

adequate to support the proposed branch expansion; and

(B) The association's management is capable of operating the association in a safe and sound manner, free of significant supervisory concern.

(3) Supervisory objection. Supervisory objection may be interposed at any point during the processing of the

application.

(c) Community reinvestment. The Office, pursuant to the Community Reinvestment Act of 1977 (12 U.S.C. 2901) ("CRA"), encourages savings associations to help meet in an affirmative and continuing manner the credit needs of all members of the communities in which they do business, including low- and moderate-income neighborhoods, consistent with safe and sound operation. In this regard, the Office will review and evaluate an applicant's record under Part 563e of this chapter, may deny an application based on the assessment of an association's CRA record, and may approve a branch application on the condition that the association improve specific aspects of its community investment-related practices and performance.

(d) Protest and oral argument—[1]
Protest. Protests to applications for
branches will have to be persuasive and
factually documented to influence the
Office's decisions on branch

applications.

(2) Oral argument. In any case in which oral argument is scheduled, the District Director or his or her designee may provide for consolidation of the oral argument on applications for permission to organize Federal savings associations or to establish branch offices. In hearing oral argument, the person presiding may determine the order of presentation by various persons and whether to permit rebuttal or he or she may permit the parties to agree on a division of time. In consolidated arguments, he or she may allow each applicant the full time which would be allowed if there were no consolidated argument. Ordinarily, the arguments should be based only on the facts and information already on file. Occasionally, a party may seek to introduce new matter. If it appears to the person presiding that there is in fact substantive new matter, he or she should permit the parties to argue on the basis of such new matter, and require the party introducing it to submit a memorandum of such new matter at the time of oral argument. If opposing parties wish to file a rebuttal, the person presiding may allow a reasonable time-10 days should suffice in most cases-for the submission of a rebuttal.

The District Director or his or her designee should include 3 copies of the transcript in the file which is transmitted to the Director.

(e) Basis for approval. The Office may approve or deny an application based on any information available to it, not limited only to the information presented by either applicant or protestant(s).

(f) Branch openings. The Office does not intend to allow associations to accumulate approved branch sites, holding them for eventual opening, and extensions will be granted only on an exceptional basis. If an association does not open a branch within the time specified in the approval, and the Director or his or her designee find that the association is not making a good faith effort to open the branch promptly, then the approval will be deemed to have expired and the association will be required to reapply if it wants to branch in that location.

(g) Branch closings. Pursuant to § 545.94 of this subchapter, the Office requires an association to notify the Office when it plans to close a branch. The Office does not intend to question an association's sound business decision to close a branch; it merely wants an opportunity to maintain competitive levels of service in all areas

of a community, if possible.

(h) Name of branch office. If an association applies to establish a branch within the market area of another savings association having a similar name, the Office may, to minimize public confusion and prevent unfair competition, condition branch approval by prescribing the name of the branch and the type of advertising that may be used in connection with such branch. In a merger or acquisition, the Office will generally allow a branch of the merged or acquired association to preserve its identity with its own name (without the word "association") followed by the words "a Division of [the name of the resulting association]."

## § 556.6 Savings accounts.

(a) Date payments considered received. If a Federal savings association has fixed a determination date as provided in its charter, it usually must actually receive payments on its savings accounts by that date to consider them received on the first of the month. However, in a month when the determination date falls on a nonbusiness day for the Federal savings association, it may consider payments received on the next business day after the determination date as received on the first of the month. The Federal savings association may not, however,

represent generally that payments received on a date later than the determination date receive earnings from the first, without stating the month in which that will occur.

(b) Redemption of savings accounts must not be discriminatory. Section 7 of a Federal mutual savings association's charter does not empower the Federal mutual savings association to redeem a shareholder's account discriminatorily. Authority to redeem savings accounts "by lot or otherwise" permits redemption only by methods similar to determination by lot, i.e., that are non-discriminatory.

(c) Sale of merchandise in connection with soliciting savings accounts. A Federal savings association may not, as an incident to powers prescribed in its charter, sell, except in connection with a promotional campaign, merchandise other than coin banks and similar coin-

savings devices.

## § 556.7 Service corporation secured debt limitation.

The unpaid balance of a note executed by a service corporation and secured by a mortgage or similar obligation is debt under § 545.74(c)(3), even if the holder of the note, in the event of default, may proceed only against the security property and has no legal basis for recovery of any deficiency from the service corporation.

## § 556.8 Suretyship.

The Office will authorize a Federal savings association to be surety under §§ 545.16 and 545.103 of this subchapter only if such activity would be properly incident to its other authorized activities.

# § 556.9 Imposition of late charges and due-on-sale clauses.

(a) The Office expects Federal savings associations to adopt procedures sufficient to ensure that, by the time of loan closing, the rights and obligations of the contracting parties regarding imposition of late charges and prepayment charges and exercise of acceleration clauses (including due-on-sale clauses) are fully and specifically disclosed to the borrower.

(b) Although there is no maximum limitation on the amount of late charges a Federal savings association may assess or collect, under contract, on loans made before August 1, 1976, secured by borrower occupied homes, the Office expects Federal savings associations to be reasonable and fair in assessing and collecting late charges against delinquent borrowers as to such loans, taking into consideration the reason for delinquency, the length of

delinquency, and the borrower's past practice respecting delinquencies.

# § 556.10 First liens on properties sold by the Secretary of HUD.

Under section 5(c) of the Act, a Federal savings association may make mortgage loans insured by the Federal Housing Administration and secured by first liens on improved real estate. The Secretary of HUD, when disposing of properties acquired by lien under default provisions of an earlier insured loan may sell the properties to individuals and insure new loans to finance those purchases. Under the procedure prescribed in 24 CFR 203.390 and 203.402, such mortgages may be insured without documentary evidence establishing the quality and validity of the mortgagee's lien. Because that procedure offers protection to Federal savings associations equivalent to that of a first lien, such loans shall be considered secured by a first lien even though new title evidence has not been obtained.

## § 556.11 Prepayment penalty on mortgage loans.

Section 545.34(c) of this subchapter makes clear that, with the exception of certain instances enumerated therein, the charging of a prepayment penalty is a matter of contract between a Federal savings association and a borrower, and that the borrower may wholly or partly prepay the loan without penalty unless the loan contract contains an express provision imposing a prepayment penalty. Thus, in view of the controlling Federal regulation, a Federal savings association may include a prepayment provision in the loan contract up to the maximum limitation of § 545.34(c) of this subchapter regardless of conflicting State law which sets a lower limit or imposes a different type of prepayment penalty, but it may not charge a prepayment penalty exceeding the limit in § 545.34(c) of this subchapter even if State law allows a higher charge.

## § 556.12 Deposit assurance of direct deposit of social security payments.

(a) Under the Social Security
Administration's "direct deposit
program", a social security beneficiary
may designate a financial institution,
including a Federal savings association,
to receive the beneficiary's benefit
payments. Thereafter, benefit payments
are made directly to the financial
institution in the form of checks or
magnetic tape notices.

(b) The Office has concluded that giving "deposit assurance" in connection with the program is within a Federal savings association's implied

powers under section 5 of the Home Owners' Loan Act. Deposit assurance consists of the Federal savings association's undertaking to credit the beneficiary's account with a "deposit" in the amount of the benefit payment on the date it is due to be received, whether or not the Federal savings association actually receives the check or magnetic tape notice from the Treasury by that date. The Office has concluded, based on the unique nature of the social security direct-deposit program and the improbability of failure to receive payments on time, that the Federal savings association "constructively" receives payment on that date.

(c) The Office believes, however, that such deposit assurance may involve some risk for Federal savings associations participating in the program and that they must therefore institute adequate safeguards and controls in conjunction therewith.

(d) Electronic fund transfers. Any electronic fund transfer, as that term is defined by section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) and § 205.2 of Regulation E of the Federal Reserve Board (12 CFR 205.2), made under this section, is subject to the provisions of the Electronic Fund Transfer Act and Regulation E.

# § 556.13 Receipt of Interest expressed as a percentage of other income.

(a) With limited exceptions, Federal savings associations lack the statutory authority to acquire an equity interest either in real estate or in a corporation. Accordingly, Federal savings associations cannot, as part of a loan transaction, acquire an ownership interest in the security property or in a corporate borrower. The issue has arisen as to whether the receipt of a share of the income generated by the security property or of a corporate borrower, or any similar participation with the borrower in the loan project, necessarily constitutes an unauthorized acquisition of an equity interest.

(b) The Office has determined that the receipt of such income or the right to receive income should not be considered an equity interest if it in substance constitutes no more than a part of the compensation received for the use of the Federal savings association's funds. Accordingly, if the borrower has an unconditional obligation to repay the loan principal, and if a Federal savings association receives a substantial payment of interest calculated periodically as a percentage of the outstanding principal loan balance, it may receive additional interest calculated on the basis of the income from or the appreciation of the security

property, the income of a corporate borrower, or some other measure of a venture's success. The means by which a Federal savings association calculates its share of the income is not a material consideration in determining whether the share constitutes an equity interest in the property.

## § 556.14 Chief executive officer of a branch office.

Section 5 of a Federal mutual savings association's bylaws provide, in part, that the association's board of directors may appoint such officers as they may determine from time to time. They may also designate appropriate titles for officers so appointed whose titles are not specified in the bylaws. The chief executive officers of a branch office may be titled division president, branch manager, or any other appropriate title which does not suggest that the branch office is an autonomous association.

#### § 556.15 Drive-in and pedestrian facilities.

Section 545.92 of this chapter under certain conditions permits a Federal savings association, without prior approval of the Office, to establish a single drive-in or pedestrian facility in conjunction with its home office and each branch office. A "pedestrian" facility is a facility at which the person doing business with the Federal savings association does not enter an office or structure of any kind but remains outside the structure and is serviced by a teller inside a building or structure. Similarly, a person doing business with the Federal savings association, in the case of a drive-in facility, will remain outside the drive-in facility and may transact business from a vehicle. The building or structure in which a teller is located for such a facility may be the Federal savings association's home or branch office or a separate structure, but it may not be placed in a store or location of some other business so as to constitute joint occupancy of quarters. There is no objection to a pedestrian facility which faces on an enclosed mall and serves pedestrians who remain in the mall while transacting business with the Federal savings association. The "ordinary" functions which may be performed at a drive-in or pedestrian facility are limited primarily to acceptance of payments on savings accounts, payment of withdrawals from accounts, acceptance of payments on mortgages or other loans, and opening of savings accounts. Although in the case of a particular Federal savings association the tellers at its regular offices may give out and receive mortgage loan applications, such

function is not an "ordinary" function performed at a teller window but is an extraordinary function, and therefore may not be performed at a drive-in or pedestrian facility.

# § 556.16 Insurance agencies—usurpation of corporate opportunities.

(a) Definitions. As used in this section: (1) Owned and "ownership", in connection with an insurance agency, include, in addition to ownership by a nerson:

(i) Ownership by the person's spouse, minor child, or other relative by blood or marriage having the same home as the

person;

(ii) Ownership through a broker or other nominee or agent; or

(iii) Ownership by a company controlled by the person.

However, the terms do not include ownership by one such person of less than 10 percent of the insurance agency, or ownership by more than one such person or less than 25 percent of the agency:

(2) Profits means any form of remuneration received, or to be received, by officers, directors, or controlling persons of the association other than salaries, fees, or commissions based upon, and reasonably related to, services actually performed respecting

an insurance agency;

(3) Referral means directing the business of association members to an affiliated insurance agency, but does not include offering association members, without specific recommendation, a list of approved insurance agencies, including the affiliated agency, unless the list is designed or given in a manner calculated to cause members to select the affiliated agency over the other listed agencies;

(b) General. Subject to exceptions in paragraph (c) of this section, as limited by paragraph (d) of this section, referral of insurance business of an association's members to an insurance agency owned by one or more officers or directors of the association, or by one or more persons having the power to direct its management, constitutes upsurpation of the association's corporate opportunity to engage in the insurance business.

(c) Exceptions. No corporate opportunity for a Federal savings association to enter the insurance business is deemed to have existed:

(1) If the referral described in paragraph (b) of this section took place:

 (i) While application for permission to engage in the insurance business was on file with the appropriate State agency and/or the Office;

(ii) Before May 20, 1971;

(iii) While a specific State statute or regulation precluded Federal savings association service corporations (or their wholly-owned subsidiaries) from engaging in the insurance business;

(iv) While State licensing or regulatory authorities whose prior approval is required to engage in the insurance business followed an established and well-known policy of refusing to accept or process applications from Federal savings association service corporations (or their wholly-owned subsidiaries) for permission to engage in the insurance business (an association need not demonstrate existence of such a policy by instituting legal proceedings to compel approval);

(v) During a reasonable period (not over 18 months) following (A) May 20, 1971, or (B) a change in the State statute or regulation described in paragraph (c)(1)(iii) of this section or policy described in paragraph (c)(1)(iv) of this section for the association to have investigated the feasibility and desirability of acquiring or establishing its own service corporation insurance business and to have prepared and filed applications with respect thereto;

(2) If the association, after filing any necessary application and making a bona fide attempt to obtain any necessary approvals (such attempt need not involve instituting legal proceedings to compel such approvals), was denied permission by the appropriate State licensing or regulatory authorities for its service corporation, or a wholly-owned subsidiary thereof, to engage in the

insurance business;

(3) If a disinterested and independent majority of the Federal savings association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity to engage in the insurance business through acquisition or de novo, as a matter of sound business judgment, taking into consideration such factors as the financial resources of the association to establish or acquire an insurance agency, the risks involved in entering the insurance business, and the projected profitability of the agency; or if involvement in the existing affiliated insurance agency by members of the association's board of directors prevented a decision by a majority of the disinterested and independent directors, the matter was submitted to the vote of the association's members or stockholders at a special annual meeting (no existing proxies may be used at such meetings and proxy solicitations must be accompanied by material which makes full, fair, and accurate disclosure of all relevant material and information

respecting the corporate opportunity to enter the insurance business);

(4) If lack of economic justification for the association to engage in the insurance business by either acquiring an existing affiliated insurance agency, or establishing or purchasing another insurance agency, was duly established.

(d) Limitation to certain exceptions.

(1) Notwithstanding the provisions of paragraphs (c)(1)(i), (c)(1)(iii), (c)(1)(iv), and paragraph (c)(3) of this section, the exceptions provided thereunder do not apply to any period of time over 18 months after May 20, 1971, during which the conditions or actions described did not exist or were not instituted.

(2) It is no defense to the charge of upsurpation of corporate opportunity that the existing affiliated insurance agency which the association could have acquired engages in business in which a service corporation may not engage under § 545.74 of this chapter, unless it was determined whether:

(i) The portion of the business of the existing affiliated insurance agency related to referrals from members of the association could have been acquired by

the association, or

(ii) It was feasible and desirable for the association, by means of a service corporation, or its wholly-owned subsidiary, to establish or acquire its

own insurance agency.

(e) Relief required. (1) Usurpation of corporate opportunity under paragraph (b) of this section entitles the association to the resulting profits of the affiliated insurance agency during the period of usurpation, if such profits are attributable to:

(i) Referrals by the association of the association borrowers to the agency

during that period, and

(ii) Renewals of such referrals made during such period, unless it can be shown that such renewals were made for a reason other than maintaining the original placement.

The association is not entitled to profits for referrals (or renewals thereof) made before the period of usurpation or for referrals (or renewals thereof) made after the corporate opportunity ceased to exist.

(2) Notwithstanding paragraph (e)(1) of this section, an association whose corporate opportunity was usurped under this section is not entitled to recover insurance agency profits:

(i) Which exceed profits actually accruing to the association's officers, directors, or controlling persons (e.g., their pro rata share of the profits based on their partial ownership of the insurance agency) during the period of usurpation; or

(ii) From a person who was an officer of the association during the period of usurpation, if it is clearly shown that the person's receipt of such profits was in lieu of a portion of what otherwise would have been officer's compensation. (Profits that exceed an amount which could reasonably be regarded to have been in lieu of compensation, based on compensation of persons in comparable positions, are recoverable.)

# § 556.17 Effect of loan participation on status of borrowing members.

Solely for the purpose of determining borrower membership in a Federal mutual savings association under parts 544 and 563b of this chapter, a person is a borrowing member of the association under its charter only if the association has singly or jointly originated a loan to the person, the loan has not been fully repaid, and the association has not sold its entire ownership interest in the loan to a third party or parties. If the loan is assumed in full, the person assuming the loan becomes a borrowing member of the association in lieu of the original borrower, regardless of whether the original borrower remains obligated on the loan.

## PART 558—POSSESSION BY CONSERVATORS FOR FEDERAL SAVINGS ASSOCIATIONS

Sec.

558.1 Procedure upon taking possession.

558.2 Notice of appointment.

558.3 Inventory.

558.4 Inspection of reports.

558.5 Delegation by conservator.

558.6 Surrender of possession by a conservator.

558.7 Final discharge and release of conservator.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

## § 558.1 Procedure upon taking possession.

- (a) The conservator for a Federal savings association shall take possession of the Federal savings association by taking possession of the principal office of the Federal savings association and in accordance with the terms of the Director's appointment.
- (b) Upon taking possession, the conservator shall immediately:
- (1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.
- (2) Serve a copy of the order of appointment upon the savings association or upon its conservator, receiver or other legal custodian by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian in the principal office of the savings association who appears to be in charge.

(3) Take possession of the Federal savings association's books, records and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the conservator knows to be holding or in possession of assets of the Federal savings association, that the conservator has succeeded to all rights, titles, powers and privileges of the Federal savings association.

(5) File with the Secretary to the Office a statement that possession was taken, including the time of the taking, which statement shall be conclusive

evidence thereof; and

(6) Post a notice on the door of the principal and other offices of the Federal savings association in substantially the following form:

The (name of Federal savings association) is in the hands of (name) as Conservator under appointment by the Director of the Office of Thrift Supervision.

Conservator

Date

(7) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the Federal savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer, or director shall thereafter have or exercise any such right, power, or privilege, or act in connection with any of the Federal savings association's assets or property.

## § 558.2 Notice of appointment.

If the Director of the Office appoints a conservator under this part, the Secretary to the Office shall mail a certified copy of the Office's appointment to the Federal savings association's address as it appears in the Office's records, and notice of the appointment shall be filed immediately for publication in the Federal Register.

## § 558.3 Inventory.

(a) As soon as practicable after taking possession, the conservator shall

inventory the Federal savings association's assets as of the date possession was taken. The inventory shall include the value on the Federal savings association's books of each asset, security therefor, a brief description of the asset and any security, and a record of the Federal savings association's liabilities. The Senior Deputy Director for Supervision (Operations) must be satisfied that the method of listing assets provides such information.

(b) There shall be four copies of the inventory;

(1) Two copies shall promptly be filed with the Secretary to the Office.

(2) One copy shall promptly be filed with the Senior Deputy Director for Supervision (Operations).

(3) One copy shall be retained during the conservatorship in the Federal savings association's principal office.

#### § 558.4 Inspection of reports.

Unless the Director of the Office or Senior Deputy Director for Supervision (Operations) otherwise directs, the conservator's inventories, statements, and reports shall be in at least two copies. One copy shall be filed with the Office, and one copy shall be filed with the Senior Deputy Director for Supervision (Operations). The copies shall constitute permanent records of the conservatorship open for inspection whenever the Office of the Secretary to the Office is open for business or at such times and on such conditions as the Director of the Office may direct.

#### § 558.5 Delegation by conservator.

The conservator may delegate any powers and authorities vested in him or her.

# § 558.6 Surrender of possession by a conservator.

- (a) When the Director of the Office restores a Federal savings association in the hands of a conservator to its previous management, that action, except as the Director of the Office otherwise provides, shall restore the rights, titles, powers and privileges of its members, stockholders, officers and directors.
- (b) When a receiver is appointed for a Federal savings association in the hands of a conservator, the conservator shall, as the Director of the Office may require, surrender possession of the association to the receiver.

## § 558.7 Final discharge and release of

When relieved of all duties, the conservator shall file with the Office a report which the Office finds

satisfactory. The Office may direct an audit in connection with the report and shall approve or disapprove the accounts of the conservator. If the accounts are approved, the conservator shall thereupon be completely and finally released.

#### PART 559—POSSESSION BY RECEIVERS FOR FEDERAL SAVINGS ASSOCIATIONS

Sec

- 559.1 Procedure upon taking possession.
- 559.2 Notice of appointment.
- 559.3 Inventory.
- 559.4 Inspection of reports.
- 559.5 Delegation by receiver.
- 559.6 Final discharge and release of

receiver.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

## § 559.1 Procedure upon taking possession.

- (a) The receiver for a Federal savings association shall take possession of the Federal savings association by taking possession of the principal office of the Federal savings association and in accordance with the terms of the Director of the Office's appointment.
- (b) Upon taking possession, the receiver shall immediately:
- (1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.
- (2) Take possession of the Federal savings association's books, records and assets.
- (3) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the receiver knows to be holding or in possession of assets of the Federal savings association, that the receiver has succeeded to all rights, titles, powers and privileges of the Federal savings association, and to the titles of any conservator, receiver, or other legal custodian of the Federal savings association previously appointed.
- (4) File with the Secretary to the Office a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof; and
- (5) Post a notice on the door of the principal and other offices of the Federal savings association.
- (i) If the appointment occurs during the three-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the notice shall be in substantially the following form:

The (name of savings association) is in the hands of the Resolution Trust Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.

Receiver-

(ii) If the appointment occurs after the end of such period, the notice shall be in substantially the following form:

The (name of savings association) is in the hands of the Federal Deposit Insurance Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.

Receiver-

(6) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the Federal savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer, or director shall thereafter have or exercise any such right, power, or privilege, or act in connection with any of the Federal savings association's assets or property.

### § 559.2 Notice of appointment.

If the Director of the Office appoints a receiver under this Part, the Secretary to the Office shall mail a certified copy of the appointment to the Federal savings association's address as it appears in the Office's records, and notice of the appointment shall be filed immediately for publication in the Federal Register.

#### § 559.3 Inventory.

- (a) As soon as practicable after taking possession, the receiver shall inventory the Federal savings association's assets as of the date possession was taken. The inventory shall include the value on the Federal savings association's books of each asset, security therefor, a brief description of the asset and any security, and a record of the Federal savings association's liabilities. The Senior Deputy Director for Supervision (Operations) must be satisfied that the method of listing assets provides such information.
- (b) There shall be four copies of the inventory:
- (1) Two copies shall promptly be filed with the Secretary to the Office.
- (2) One copy shall promptly be filed with the Senior Deputy Director for Supervision (Operations).
- (3) One copy shall be retained during the receivership in the Federal savings association's principal office.

#### § 559.4 Inspection of reports.

The receiver's inventories, statements and reports shall be in at least as many copies as these regulations require or as the Director of the Office otherwise directs. One copy shall be filed with the Office and shall constitute permanent records of the liquidation open for inspection at such time and on such conditions as the Director of the Office may direct, or in the absence of such direction, whenever the office of the Office is open for business.

#### § 559.5 Delegation by receiver.

The receiver may delegate any powers and authorities vested in him or her.

## § 549.6 Final discharge and release of receiver.

When the receiver recommends final distribution of assets or is otherwise relieved of its duties, it shall file with the Office a detailed report in form satisfactory to the Office. Unless the Director of the Office otherwise directs, upon final liquidation of the receivership or when the receiver completes, or is otherwise relieved of, its duties, the receivership shall be examined and audited. The receiver's accounts shall be approved or disapproved, and if approved, the receiver shall be completely and finally released.

## SUBCHAPTER D—REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS

### PART 561—DEFINITIONS

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Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

### § 561.1 General.

Unless another definition is provided in this subchapter, definitions in Part 541 of this chapter apply.

### § 561.2 Account.

The term "account" means any savings account, demand account, certificate account, tax and loan account, note account, United States Treasury general account or United States Treasury time deposit-open account, whether in the form of a deposit or a share, held by an accountholder in a savings association.

#### § 561.3 Accountholder.

The term "accountholder" means the holder of an account or accounts in a savings association insured by the SAIF. The term does not include the holder of any subordinated debt security or any mortgage-backed bond issued by the savings association.

## § 561.4 Affiliate.

The term "affiliate" of a savings association, unless otherwise defined, means any corporation, business trust, association, or other similar organization:

(a) Of which a savings association, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percentum of the number of shares voted for the election of its

directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions; or

(b) Of which control is held, directly or indirectly through stock ownership or in any other manner, by the shareholders of a savings association who own or control either a majority of the shares of such savings association or more than 50 per centum of the number of shares voted for the election of directors of such savings association at the preceding election, or by trustees for the benefit of the shareholders of any such savings association; or

(c) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one savings association.

## § 561.5 Affiliated person.

The term "affiliated person" of a savings association means the following: (a) A director, officer, or controlling

person of such association;

(b) A spouse of a director, officer, or controlling person of such association;

(c) A member of the immediate family of a director, officer, or controlling person of such association, who has the same home as such person or who is a director or officer of any subsidiary of such association or of any holding company affiliate of such association;

(d) Any corporation or organization (other than the savings association or a corporation or organization through which the savings association operates) of which a director, officer or the controlling person of such association:

(1) Is chief executive officer, chief financial officer, or a person performing similar functions;

(2) Is a general partner;

(3) Is a limited partner who, directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the association. owns an interest of 10 percent or more in the partnership (based on the value of his or her contribution) or who, directly or indirectly with other directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, owns an interest of 25 percent or more in the partnership; or

(4) Directly or indirectly either alone or with his or her spouse and the members of his or her immediate family who are also affiliated persons of the association, owns or controls 10 percent or more of any class of equity securities or owns or controls, with other

directors, officers, and controlling persons of such association and their spouses and their immediate family members who are also affiliated persons of the association, 25 percent or more of any class of equity securities; and

(5) Any trust or other estate in which a director, officer, or controlling person of such association or the spouse of such person has a substantial beneficial interest or as to which such person or his or her spouse serves as trustee or in a similar fiduciary capacity.

#### § 561.6 Audit period.

The "audit period" of a savings association means the twelve month period (or other period in the case of a change in audit period) covered by the annual audit conducted to satisfy \$ 563,170.

#### § 561.7 BIF.

The term "BIF" means the Bank Insurance Fund established by the Federal Deposit Insurance Act. (12 U.S.C. 1821 et seq.)

## § 561.8 [Reserved]

#### § 561.9 Certificate account.

The term "certificate account" means a savings account evidenced by a certificate that must be held for a fixed or minimum term.

### § 561.10 Closed-end consumer credit.

The term "closed-end consumer credit" means consumer credit other than open-end consumer credit.

### § 561.11 Closing date.

The term "closing date" means any annual or semiannual closing date.

### § 561.12 Consumer credit.

The term "consumer credit" means credit extended to a natural person for personal, family, or household purposes, including loans secured by liens on real estate and chattel liens secured by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security: Provided, the savings association relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan. Appropriate evidence to demonstrate justification for such reliance should be retained in a savings association's files. Among the types of credit included within this term are consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of

real property; loans in the nature of overdraft protection; and credit extended in connection with credit cards.

## § 561.13 Consumer credit classified as a loss.

The term "consumer credit classified as a loss" means closed-end consumer credit delinquent 120 days or more (5 monthly payments or more) and openend consumer credit delinquent 180 days or more (7 zero billing cycles or more). For the purposes of computing delinquency, a payment of 90 percent or more of the contractual payment will be considered as a full payment. If a savings association can clearly demonstrate that repayment would occur regardless of delinquency status—

for example, the loan is well-secured by collateral and is in the process of collection; the loan is supported by a valid guarantee or insurance; or it is a loan where claims have been filed against a solvent estate—then such loan need not be classified as a loss. The following table illustrates the delinquency computation:

#### **CLOSED-END CONSUMER CREDIT**

Due date	Period	Delinquency status	Classification	
7/10	6/10-7/09	Not delinquent	Slow. Loss. <sup>1</sup> Loss. <sup>1</sup>	

#### **OPEN-END CONSUMER CREDIT**

Zero billing		billing	Days		Class
Statement	Day	Cycle	Payment record	Delinquent	Class
1 7 8 9	1 180 210 240	7	No payment	180	Slow. Loss. 1 Loss. 1

<sup>&</sup>lt;sup>1</sup> Charge-off as required by § 563.46 occurs.

### § 561.14 Controlling person.

The term "controlling person" of a savings association means any person or entity which, either directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote, or holds proxies representing, ten percent or more of the voting shares or rights of such savings association; or controls in any manner the election or appointment of a majority of the directors of such savings association. However, a director of a savings association will not be deemed to be a controlling person of such savings association based upon his or her voting, or acting in concert with other directors in voting, proxies:

(a) Obtained in connection with an annual solicitation of proxies, or

(b) Obtained from savings account holders and borrowers if such proxies are voted as directed by a majority vote of the entire board of directors of such association, or of a committee of such directors if such committee's composition and authority are controlled by a majority vote of the entire board and if its authority is revocable by such a majority.

## § 561.15 Corporation.

The terms "Corporation" and "FDIC" mean the Federal Deposit Insurance Corporation.

#### § 561.16 Demand accounts.

(a) The term "demand accounts" means non-interest-bearing demand deposits which are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and which are permitted to be issued by statute, regulation, or otherwise and are payable on demand, as provided in § 563.6(b) of this chapter.

(b) Premiums, whether in the form of merchandise, credit, or cash, given by a savings association to the holder of a demand deposit shall not be deemed the payment of interest on a demand deposit if:

(1) The premium is given to the holder of a demand deposit only upon the opening of a new account or the addition to, or renewal of, an existing demand account;

(2) No more than two premiums per account are given within a twelvemonth period; and

(3) The value of the premium, or in the case of articles of merchandise, the total cost (including shipping, warehousing, packaging, and handling costs) does not exceed \$10 for deposits of less than \$5000 or \$20 for deposits of \$5000 or more.

(c) The values or costs of the premiums may not be averaged.

(d) A savings association may not solicit funds for deposit on the basis that the savings association divide the funds into several accounts for the purpose of enabling the savings association to pay the depositor more than two premiums within a twelve-month period on the solicited funds.

(e) The savings association shall retain in its files information necessary for an examiner to determine compliance with paragraph (b) of this section, and shall make such information available to the examiner upon request.

(f) A fee paid by a savings association to a person who introduces a depositor to the savings association shall not be deemed a payment of interest to the depositor if the fee:

(1) Consists of bonuses in cash or merchandise to the savings association's employees for participation in an account drive, contest or other incentive plan: *Provided, That* such bonuses are tied to the total amount of deposits solicited; or

(2) Is paid to a bona fide broker if:

 (i) The broker is principally engaged in the business of acting as a broker or dealer in regard to deposits, securities, or money market instruments;

(ii) The relationship between the broker and savings association is memorialized in a written agreement, a copy of which is retained by the savings association and made available to examiners; and (iii) An officer of the broker certifies that no portion of the fee paid to the broker is directly or indirectly passed on to the depositor, and a copy of the certification is given to the savings association to be retained on file with the agreement.

(g) A savings association's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not considered a paying of interest.

### § 561.17 Deposit broker.

The term "deposit broker" means "deposit broker" as defined in section 29(f)(1) of the Federal Deposit Insurance Act.

## § 561.18 Director.

(a) The term "director" means any director, trustee, or other person performing similar functions with respect to any organization whether incorporated or unincorporated. Such term does not include an advisory director, honorary director, director emeritus, or similar person, unless the person is otherwise performing functions similar to those of a director.

(b) The term "Director" means the Director of the Office of Thrift Supervision as established in section 3 of the Act.

## § 561.19 Financial institution.

The term "financial institution" has the same meaning as the term "depository institution" set forth in 12 U.S.C. 1813(c)(1).

## § 561.20 Guaranteed loan.

The term "guaranteed loan" means a loan that is guaranteed, including a guarantee to repurchase, in whole or in part, or as to which a commitment to guarantee has been made, under the provisions of any of the following:

(a) The Servicemen's Readjustment Act of 1944 or Chapter 37 of Title 38, United States Code;

(b) The New Communities Act of 1968;

(c) Section 221 or section 224 of the Foreign Assistance Act of 1961, as in effect prior to December 30, 1969; or

(d) Section 221 or section 222 of the Foreign Assistance Act of 1961, as in effect on December 30, 1969, and thereafter.

## § 561.21 Guaranteed obligation.

The term "guaranteed obligation" means an obligation that is guaranteed, in whole or in part, or as to which a commitment to guarantee has been made under the provisions of the New Communities Act of 1968.

#### § 561.22 Holding company affiliate.

The term "holding company affiliate" of a savings association means a savings and loan holding company of which such savings association is a subsidiary and any other subsidiary of such holding company other than a subsidiary of such savings association. The term "holding company affiliate" applies to an uninsured institution as if such institution were a savings association. For purposes of this definition of "holding company affiliate", see § 583.24 "Uninsured institution", § 583.20 "Savings and loan holding company", § 583.23 "Subsidiary", § 583.2 "Affiliate", and related definitions in part 583 of this chapter. The term "holding company affiliate" of a bank means a bank holding company of which the bank is a subsidiary and any other subsidiary of such holding company. For purposes of this definition, see § 583.4 "Bank holding company", and § 583.3 "Bank".

#### § 561.23 Home mortgage.

The term "home mortgage" means a mortgage on real estate in fee simple, or on a leasehold of:

(a) Not less than 99 years which is

renewable or

(b) Not less than 50 years from the date the mortgage was executed, which comprises one or more homes or other dwelling units, including first mortgages, real estate sales contracts, and other classes of first liens commonly given to secure advances on real estate by financial institutions in the State where the real estate is located which are authorized under the Federal Home Loan Bank Act to become members of a Federal Home Loan Bank, together with any credit instrument secured thereby.

## § 561.24 Immediate family.

The term "immediate family" of any natural person means the following (whether by the full or half blood or by adoption):

(a) Such person's spouse, father, mother, children, brothers, sisters, and

grandchildren;

(b) The father, mother, brothers, and sisters of such person's spouse; and

(c) The spouse of a child, brother, or sister of such person.

## § 561.25 Insured loan.

The term "insured loan" means a loan which is insured in whole or in part, or as to which the mortgagee is insured, in whole or in part, or as to which a commitment for any such insurance has been made under the provisions of the National Housing Act, or the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38, United States

Code, as now or hereafter amended. Such term also means an education loan which is insured by the U.S.

Commissioner of Education under Part B of Title IV of the Higher Education Act of 1965 or the National Vocational Student Loan Insurance Act of 1965, as now or hereafter amended, or which is insured by a State which has pledged its full faith and credit to such insurance, or which is insured by a State or nonprofit private institution or organization with which the U.S. Commissioner of Education has a guaranty agreement under subsection (c) of section 428 of the Higher Education Act of 1965.

#### § 561.26 Land loan.

The term "land loan" means a loan:

(a) Secured by real estate upon which all facilities and improvements have been completely installed, as required by local regulations and practices, so that it is entirely prepared for the erection of structures;

(b) To finance the purchase of land and the accomplishment of all improvements required to convert it to developed building lots; or

(c) Secured by land upon which there

is no structure.

## § 561.27 Low-rent housing.

The term "low-rent housing" means real estate which is, or which is being constructed, remodeled, rehabilitated, modernized, or renovated to be, the subject of an annual contributions contract for low-rent housing under the provisions of the United States Housing Act of 1937, as amended.

## § 561.28 Money Market Deposit Accounts.

(a) Money Market Deposit Accounts ("MMDAs") offered by Federal savings associations in accordance with 12 U.S.C. 1464(b)(1) and by state-chartered savings associations in accordance with applicable state law are savings accounts on which interest may be paid if issued subject to the following limitations:

(1) The savings association shall reserve the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account; and

(2)(i) The depositor is authorized by the savings association to make no more than six transfers per calendar month or statement cycle (or similar period) of at least four weeks by means of preauthorized, automatic, telephonic, or data transmission agreement, order, or instruction to another account of the depositor at the same savings association to the savings association itself, or to a third party: Provided, That

no more than three of the six transfers provided for in this paragraph (a)(2)(i) may be by check, draft, debit card, or similar order made by the depositor and

payable to third parties.

(ii) Savings associations may permit holders of MMDAs to make unlimited transfers for the purpose of repaying loans (except overdraft loans on the depositor's demand account) and associated expenses at the same savings association (as originator or servicer), to make unlimited transfers of funds from this account to another account of the same depositor at the same savings association or to make unlimited payments directly to the depositor from the account when such transfers or payments are made by mail, messenger, automated teller machine, or in person, or when such payments are made by telephone (via check mailed to the depositor).

(3) In order to ensure that no more than the number of transfers specified in paragraph (a)(2)(i) of this section are made, a savings association must either:

(i) Prevent transfers of funds in excess

of the limitations; or

(ii) Adopt procedures to monitor those transfers on an after-the-fact basis and contact customers who exceed the limits on more than an occasional basis. For customers who continue to violate those limits after being contacted by the depository savings association the depository savings association must either place funds in another account that the depositor is eligible to maintain or take away the account's transfer and draft capacities.

(iii) Insured savings association at their option, may use on a consistent basis either the date on a check or the date it is paid in determining whether the transfer limitations within the specified interval are exceeded.

(b) Federal savings associations may offer MMDAs to any depositor, and state-chartered savings associations may offer MMDAs to any depositor not inconsistent with applicable state law.

## § 561.29 Negotiable Order of Withdrawal Accounts.

(a) Negotiable Order of Withdrawal ("NOW") accounts are savings accounts authorized by 12 U.S.C. 1832 on which the savings association reserves the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account.

(b) For purposes of 12 U.S.C. 1832:

(1) An organization shall be deemed "operated primarily for religious, philanthropic, charitable, educational, or other similar purposes and \* \* \* not \* \* for profit" if it is described in sections 501(c)(3) through (13),

501(c)(19), or 528 of the Internal Revenue Code; and

(2) The funds of a sole proprietorship or unincorporated business owned by a husband and wife shall be deemed beneficially owned by "one or more individuals."

## § 561.30 Nonresidential construction loan.

The term "nonresidential construction loan" means a loan for construction of other than one or more dwelling units.

## § 561.31 Nonwithdrawable account.

The term "nonwithdrawable account" means an account which by the terms of the contract of the accountholder with the savings association or by provisions of state law cannot be paid to the accountholder until all liabilities, including other classes of share liability of the savings association have been fully liquidated and paid upon the winding up of the savings association is referred to as a "nonwithdrawable account."

#### § 561.32 Normal lending territory.

(a) Normal lending territory is the area (1) within the State in which such savings association's principal office is located; (2) within any portion of a circle with a radius of 100 miles from the principal office which is outside of such State; and (3) other territory in which the savings association was operating on June 27, 1934.

(b) Definitions. For the purpose of this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States; and a county, parish, or similar political subdivision of a State is the unit of "territory" in which the savings association was operating on June 27, 1934.

## § 561.33 Note account.

The term "note account" means a note, subject to the right of immediate call, evidencing funds held by depositories electing the note option under applicable United States Treasury Department regulations. Note accounts are not savings accounts or savings deposits.

#### § 561.34 Office.

The term "Office" means the Office as established in Section 3 of the Act or any official duly authorized to act on its behalf. Where appropriate in context, it also refers to the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation as predecessor agencies to the Office.

## § 561.35 Officer.

The term "Officer" means the president, any vice-president (but not an assistant vice-president, second vicepresident, or other vice president having authority similar to an assistant or second vice-president), the secretary, the treasurer, the comptroller, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated. The term "officer" also includes the chairman of the board of directors if the chairman is authorized by the charter or by-laws of the organization to participate in its operating management or if the chairman in fact participates in such management.

#### § 561.36 Open-end consumer credit.

The term "open-end credit" means credit as defined in Regulation Z (12 CFR 226.2(a)(20)).

### § 561.37 Parent company; subsidiary.

The terms "parent company" and "subsidiary" have the meanings given to them by §§ 583.15 and 583.23 of this chapter, respectively.

#### § 561.38 Political subdivision.

The term "political subdivision" includes any subdivision of a public unit, any principal department of such public unit:

(a) The creation of which subdivision or department has been expressly authorized by state statute,

(b) To which some functions of government have been delegated by state statute, and

(c) To which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation, improvement, levee, sanitary, school or power districts and bridge or port authorities and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies or boards within principal departments.

## § 561.39 Principal office.

The term "principal office" means the home office of a savings association established as such in conformity with the laws under which the savings association is organized.

## § 561.40 Public unit.

The term "public unit" means the United States, any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, the Virgin Islands, any county, any municipality or any political subdivision thereof.

#### § 561.41 SAIF.

The term "SAIF" means the Savings Association Insurance Fund, established by the Federal Deposit Insurance Act. (12 U.S.C. 1811 et seq.).

## § 561.42 Savings account.

The term "savings account" means any withdrawable account, except a demand account as defined in §§ 563.8 and 561.16 of this Chapter, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time depositopen account.

## § 561.43 Savings association.

The term "savings association" means a savings association as defined in section 3 of the Federal Deposit Insurance Act, the deposits of which are insured by the Corporation. It includes a Federal savings association or Federal savings bank, chartered under section 5 of the Act, or a building and loan, savings and loan, or homestead association, or a cooperative bank (other than a cooperative bank which is a State bank as defined in section 3(a)(2) of the Federal Deposit Insurance Act) organized and operating according to the laws of the State in which it is chartered or organized, or a corporation

(other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act) that the Board of Directors of the Federal Deposit Insurance Corporation and the Director of the Office of Thrift Supervision jointly determine to be operating substantially in the same manner as a savings association.

## § 561.44 Security.

The term "security" means any nonwithdrawable account, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profitsharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing, except that a "security" shall not include an account or deposit insured by the Federal Deposit Insurance Corporation.

## § 561.45 Service corporation.

The term "service corporation" means any corporation, the majority of the capital stock of which is owned by one or more savings associations and which engages, directly or indirectly, in any activities similar to activities which may be engaged in by a service corporation in which a Federal savings association may invest under § 545.74 of this chapter.

## § 561.46 Service corporation affiliate.

The term "service corporation affiliate" of a savings association means any service corporation which is an affiliate of a savings association.

#### § 561.47 Slow consumer credit.

The term "slow consumer credit" means closed-end consumer credit delinquent 90 to 119 days (4 monthly payments) and open-end consumer credit delinquent 90 to 179 days (4-to-6 zero billing cycles). For the purposes of computing delinquency, a payment of 90 percent or more of the contractual payment will be considered as a full payment. If an association can clearly demonstrate that repayment would occur regardless of delinquency statusfor example, the loan is well-secured by collateral and is in the process of collection; the loan is supported by a valid guarantee or insurance; or it is a loan where the claims have been filed against a solvent estate—then such loan need not be classified as "slow consumer credit." The following table illustrates the delinquency computation:

#### CLOSED-END CONSUMER CREDIT

Due date	Period	Delinquency status	Classification	
4/10 5/10	4/10-5/09 4/10-6/09	Not delinquent	Slow.	

## **OPEN-END CONSUMER CREDIT**

Statement	Zero	billing	Days		
	Day	Cycle	Payment record	Delinquent	Class
1 2 3 4 5 6 7	1 30 60 90 120 150 180	1 2 3 4 5 6	No payment	0 5 30 60 90 120 150	Slow. Slow.

### § 561.48 Slow loans.

With respect to loans on the security of a "home," as defined in § 541.14 of this chapter, which is owner-occupied, the term "slow loans" means:

- (a) Any loan or land contract less than 1 year old which is the equivalent of 60 days (2 months) or more contractually delinquent; or
- (b) Any loan or land contract that is from 1 year to 7 years old which is the equivalent of 90 days (3 months) or more contractually delinquent; or
- (c) Any loan or land contract more than 7 years old which is the equivalent of 90 days (3 months) or more contractually delinquent unless 10 out of

the last 12 contractually required payments have been made; or

- (d) Any mortgage loan, deed or trust, or land contract on which taxes on the security are due and unpaid for the equivalent of two or more years; or
- (e) Any loan or land contract that has been modified or refinanced within the preceding 12 months, while

contractually delinquent, except a mortgage loan or land contract:

(1) More than 2 years old and less than 30 days (1 month) contractually delinquent at the time of the modification or refinancing and not previously modified or refinanced during the past 60 months or the life of the loan, whichever period is shorter, or

(2) Modified or refinanced to provide for payment of real estate taxes, other governmental assessments, hazard insurance premiums, mortgage life insurance or disability insurance premiums where the savings association is the assignee or beneficiary of the insurance, or water or sewer rent or charges, if provision is made for payment of the funds so advanced within the succeeding 12 months.

(f) In computing delinquencies for purposes of this section, any loan as to which the savings association has the benefit of any guaranty by the FDIC as successor to the Federal Savings and Loan Insurance Corporation shall be considered to be current as of the date such guaranty becomes effective with respect to that particular loan and only subsequent delinquencies shall be counted in determining whether the loan is slow.

(g) Any loan or land contract that has been made, extended, or continued beyond the term permitted by applicable lending limitations.

Provided, That any mortgage loan, deed of trust, or land contract on which the total indebtedness is less than 60 percent of the original amount, any loan on which all contractually required payments have been made during the preceding 12 months and any loan on which payments are being deferred pursuant to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall not be considered to be a slow loan under this section.

### § 561.49 [Reserved]

### § 561.50 State.

The term "State" means a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

## § 561.51 Subordinated debt security.

The term "subordinated debt security" means any unsecured note, debenture, or other debt security issued by a savings association and subordinated on liquidation to all claims having the same priority as account holders or any higher priority.

## § 561.52 Tax and loan account.

The term "tax and loan account" means an account, the balance of which

is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations. Such accounts are not savings accounts or savings deposits.

## § 561.53 United States Treasury General Account.

The term "United States Treasury General Account" means an account maintained in the name of the United States Treasury the balance of which is subject to the right of immediate withdrawal, except in the case of the closure of the member, and in which a zero balance may be maintained. Such accounts are not savings accounts or savings deposits.

## § 561.54 United States Treasury Time Deposit Open Account.

The term "United States Treasury
Time Deposit Open Account" means a
non-interest-bearing account maintained
in the name of the United States
Treasury which may not be withdrawn
prior to the expiration of 30 days'
written notice from the United States
Treasury, or such other period of notice
as the Treasury may require. Such
accounts are not savings accounts or
savings deposits.

### § 561.55 With recourse.

(a) The term "with recourse" means, in connection with the sale of a loan or a participation interest in a loan, an agreement or arrangement under which the purchaser is to be entitled to receive from the seller a sum of money or thing of value, whether tangible or intangible (including any substitution), upon default in payment of any loan involved or any part thereof or to withhold or to have withheld from the seller a sum of money or anything of value by way of security against default. The recourse liability resulting from a sale with recourse shall be the total book value of any loan sold with recourse less:

(1) The amount of any insurance or guarantee against loss in the event of default provided by a third party,

(2) The amount of any loss to be borne by the purchaser in the event of default, and

(3) The amount of any loss resulting from a recourse obligation entered on the books and records of the savings association.

(b) The term "with recourse" does not include loans or interests therein where the agreement of sale provides for the savings association directly or indirectly

 To hold or retain a subordinate interest in a specified percentage of the loans or interests; or (2) To guarantee against loss up to a specified percentage of the loans or interests, which specified percentage shall not exceed ten percent of the outstanding balance of the loans or interests at the time of sale: Provided, That the savings association designates reserves as provided in § 567.2(b)(4)(ii)(A) of this subchapter for the subordinate interest or guarantee.

#### PART 563—OPERATIONS

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Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 287 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

### Subpart A-Accounts

## § 563.1 Form of account.

(a) Submission for approval. All savings associations prior to commencing operations shall have filed with the Office for approval forms of all accounts and securities proposed to be issued by the applicant as a savings association. An applicant also shall submit for approval its charter, constitution, and bylaws, and all amendments thereto, affecting its accounts or securities. No savings association shall issue:

(1) Any form of account (except NOW accounts as defined in § 541.9 of this chapter) without complying with the requirements of paragraph (b) of this

section: or

(2) Any security that has not been approved in writing by the Office. Notwithstanding any other delegation of the authority granted under this paragraph (a), the Chief Counsel or his or her designee, are delegated exclusive authority to exercise the Office's approval authority under this paragraph (a) with respect to preferred stock security forms and amendments thereto for mandatorily redeemable preferred stock and preferred stock redeemable at the option of the issuer. Any savings association which amends its charter, constitution, or bylaws affecting its accounts or securities promptly shall transmit such amendments to the Office for approval. Except with the written approval of the Office, no savings association may issue or have outstanding any class of account having preference, whether as to time or amount in the event of liquidation, over any other class of account: Provided, That where there may be a change from one type of account to another, a reasonable time, to be determined by the Office may be allowed to effect such change. Each savings association shall cause a true copy of its charter and bylaws and all amendments thereto to be available to accountholders at all times in each office of the savings association and shall upon request deliver to any accountholders a copy of such charter, constitution, bylaws, and amendments.

(b) Filing. Prior to issuing any form of account, a savings association shall file with the Office:

(2) An opinion of its legal counsel that

(1) The form of account and

the form complies with the requirements of applicable law and regulations and the association's charter and bylaws. If the account is issued in negotiable instrument form, the opinion must state expressly that the form so qualifies under applicable law. Filing shall be made by delivering a copy of the form and legal opinion to the savings association's District Director (as defined in § 541.9 of this chapter). The savings association shall retain a copy of the opinion for as long as accounts in that form are outstanding. The requirements of this paragraph (b) shall not apply if a savings association issues a form of account that has been approved by the Office for use by saving associations.

#### § 563.2 Simple form of certificate; passbooks.

A mutual savings association which, in accordance with State law, includes in its charter, constitution, or bylaws a clear provision that all shareholders are members and shall share equally in earnings and in assets (except for bonus payments under a bonus plan) pro rata to paid-in value, plus credited dividends, and that the savings association shall not directly or indirectly charge any membership, admission, repurchase, withdrawal, or any other fee or sum of money for the privilege of becoming, remaining, or ceasing to be a member of the savings association, may issue a simple form of savings or investment certificate or a passbook, which need not contain any membership certificate or any statement of the dividend, withdrawal, or other rights of members.

#### § 563.3 Long form of membership certificate.

Every share, membership, or deposit certificate, passbook or other instrument evidencing a withdrawable investment hereafter issued by a savings association, which pays or proposes to pay a different rate of dividends or interest upon different classes of shares or securities, which prefers, or proposes to prefer, either as to time or amount of participation in earnings or assets (except by way of a bonus plan), any one or more classes of shares or securities, or which charges directly or indirectly any membership, admission, repurchase, withdrawal, or any other fee or sum of money for the privilege of becoming, remaining, or ceasing to be a saver or investor in the savings

association must, unless the Office specifically permits omission of one or more of such recitals, include in its provisions, and display in easily read type, a full and understandable statement of the method of maturing such contracts, the rate of interest paid, or the dividend provisions, or both, under which the savings association operates, and the charge or charges, if any, for the privilege of becoming, remaining, or ceasing to be a saver or investor in the savings association.

#### § 563.4 Brokered deposits.

et

(a) For purposes of this section, the term "brokered deposits" means any account obtained or placed by or through a deposit broker, as defined in § 561.17 of this subchapter.

(b) For purposes of this section, the term "regulatory capital requirement"

means the greater of:

(1) An amount equal to at least three percent of all liabilities (i.e. total assets, net of the following: loans in process, specific reserves, and deferred credits other than deferred taxes; minus regulatory capital as defined by § 567.1 of this subchapter);

(2) The minimum regulatory capital required by § 567.2 of this subchapter; or

(3) Any regulatory capital requirement imposed upon the savings association by a supervisory agreement or imposed as a condition to any consent or approval granted by the Office with respect to the savings association.

(c) Except as provided in paragraph (d) of this section, no savings association which does not meet or exceed the regulatory capital requirement set forth in paragraph (b) of this section may commit to accept brokered deposits if the amount of such deposits, together with the total amount of all other brokered deposits then outstanding, would exceed five percent of its total deposits.

(d) A savings association that does not meet the regulatory capital requirement set forth in paragraph (b) of this section may apply to its District Director for a waiver of the provisions of paragraph (c) of this section. The District Director may grant such a waiver in writing for a period not to exceed one year, upon finding that:

(1) The savings association would suffer or is likely to suffer from either a shortage of liquidity or a substantial dissipation of assets if it were not able to accept additional brokered deposits;

(2) Other methods of raising additional funds would pose a greater risk of adverse effects on the financial state of the savings association or would increase costs to the Corporation; and

(3) The savings association's board of directors has adopted a plan of action which is, in the opinion of the District Director, reasonably designed to reduce the savings association's outstanding brokered deposits to comply with paragraph (c) of this section within two years of the date that such waiver is granted.

Material deviations from such a plan, in the absence or approval in writing of such deviation by the District Director, shall constitute a violation of this section.

## § 563.5 Securities: Statement of non-insurance.

Every security issued by a savings association must include in its provisions a clear statement that the security is not insured by the Federal Deposit Insurance Corporation.

## § 563.6 Payment of accounts on demand.

(a) Except for demand accounts, tax and loan accounts, note accounts, and United States Treasury general accounts, as defined in Part 561 of this chapter, no savings association shall issue any account, or advertise or represent that it will pay holders of its accounts, on demand.

(b) As used in paragraph (a) of this section, accounts payable on demand

are:

 Accounts with an original maturity or required notice period of less than seven days;

(2) Accounts for which the savings association does not reserve the right to require at least seven days' written notice prior to withdrawal or transfer of funds in the account; or

(3) Savings accounts held by depositors ineligible to hold negotiable order of withdrawal accounts under 12 U.S.C. 1832, the savings association authorizes the depositor to exceed the transaction limitations set forth in \$ 561.28(a)(2) of this subchapter despite any maturity requirements or notice of withdrawal requirements which may be imposed or reserved.

(c) A savings association may provide in any time deposit contract that if the deposit or any portion thereof is withdrawn not more than ten days after a maturity date, interest will continue to be paid for such period. The payment of such interest is not payment of interest on a demand deposit.

(d) A savings association may continue to pay interest for a period between a maturity date and the date of renewal of the deposit: *Provided*, That such certificate is renewed not more than ten days after maturity. The payment of such interest is not payment of interest on a demand deposit.

## § 563.7 Fixed-term accounts (certificate accounts).

(a) General. Subject to the requirements of this section, a savings association may offer certificate accounts, as defined in § 561.9 of this part, in such form as the board of directors of the savings association may authorize by resolution. With respect to any time deposit, a savings association may impose a penalty for early withdrawal, subject to the limitations in paragraph (e) of this section.<sup>1</sup>

(b) Payment of interest or other earnings. A savings association may pay earnings on a certificate account at a rate or anticipated rate of return determined at the time that the account is accepted. The rate or anticipated rate on a certificate account either may be fixed or may vary according to a schedule, index, or formula specified at the time that the account is accepted.

(c) Limitations. In issuing certificate accounts, no savings association shall:

(1) Accept any fixed-term account for a term of less than seven days; or

(2) Issue any form of certificate account, unless the association has complied with the requirements of § 563.1 of this part.

(d) Disclosure. Each certificate account shall include in its provisions and display in easily read type:

(1) The rate or anticipated rate of earnings to be paid; the basis, frequency, extent, and limits of any variation in the rate over the term of the account; and the dates or frequency at which earnings are distributable;

(2) The amount of the account and the date of its issuance;

(3) The minimum term (or for a savings deposit, the term) and minimum-balance requirement;

(4) Any provisions limiting the right of the accountholder to make additions to the account or to withdraw all or any portion of the account prior to its maturity;

(5) Any penalty or penalties for withdrawal prior to expiration of the term:

(6) Any provisions relating to redemption, call, or repurchase;

<sup>&</sup>lt;sup>1</sup> Savings associations are advised that for purposes of Regulation D reserve requirements imposed by the Federal Reserve Board, early withdrawal penalties may be required to distinguish time deposits from demand deposits. The penalty, seven days' interest, applies only to withdrawals within the first six days after a time deposit is opened. See FRB Docket No. R-0565 (March 17, 1988). Early withdrawal penalties also may be required under Regulation D to distinguish nonpersonal time deposits with maturities of less than eighteen months for nonpersonal time deposits with maturities of eighteen months or more. The required penalty is one months' interest. *Id.* 

(7) Any provisions relating to a renewal when the term expires;

(8) Any provisions relating to earnings after expiration of the term or any renewal period; and

(9) Any provision converting the rate of return on the certificate account to another rate of return, whenever any minimum balance requirement established by the savings association may cease to be met.

(e)(1) A certificate account may prohibit withdrawal of any portion of such account prior to maturity, except under such circumstances as may be set forth therein: Provided, That under the following circumstances no certificate may prohibit withdrawal and no early withdrawal penalty may be imposed:

 (i) After the death of an account owner, if the withdrawal is requested by any other owner of the account or by the authorized representative of the decedent's estate; or

(ii) After an account owner is determined by a court or other administrative body of proper jurisdiction to be legally incompetent, if the account was issued before the date of such determination and not extended or renewed after that date.

(2) For purposes of paragraph (e)(1) of this section, an "owner" is an individual who has full legal and beneficial title to all or part of the account or beneficial title to all or part of the account and full power of disposition or alienation with respect thereto, including but not limited to power of revocation with respect to any trust, regardless of whether such owner was a trustee, of which such account comprises all or part of the trust assets.

## § 563.8 Negotiable order of withdrawal accounts authorized.

Savings associations may offer negotiable order of withdrawal accounts as are authorized by 12 U.S.C. 1832 and section 561.29 of this subchapter.

## § 563.9 Eurodollar deposits.

- (a) Definitions. As used in this section:
- (1) Eurodollar certificate means a certificate account, denominated in United States dollars, evidencing a Eurodollar deposit;
- (2) Eurodollar deposit means a deposit by a person who is not a United States person;
- (3) United States person means any national or resident of the United States of America, its territories and possessions, including any corporation, trust, estate, or other entity organized under the laws thereof or of any political subdivision thereof; and

(4) Participation means an interest or participation in a Eurodollar certificate.

(b) General. To the extent that it has legal authority to do so, a savings association may issue Eurodollar certificates in conformity with this section and § 563.7 of this part.

(c) Collateralization of certificates. A savings association may give security for Eurodollar deposits subject to any notification or right of repurchase requirements that may be imposed by the FDIC.

(d) Requirements as to distribution.
(1) In exercising authority under this section, a savings association shall require an undertaking in writing from each purchaser of a Eurodollar certificate or participation therein to the effect that:

(i) If the purchaser is not a dealer, he will not offer, sell or deliver such Eurodollar certificate(s) or perticipations therein directly or indirectly in the United States of America or its territories or possessions or to nationals or residents thereof, including any corporation, trust, estate or other entity organized under the laws thereof or of any political subdivision thereof; or

(ii) If the purchaser is a dealer, he has not offered, sold or delivered, and agrees that he will not offer, sell or deliver, any such Eurodollar certificate(s) or participations therein directly or indirectly in the United States of America or its territories or possessions or to nationals or residents thereof and he is not purchasing any such Eurodollar certificate(s) or participations therein for the account of any such nationals or residents. Further, if the purchaser is a dealer, he shall agree that he will require the undertaking required by paragraph (d)(1)(i) of this section on any sales of the Eurodollar certificate(s) or participations therein and that he will inform the issuing savings association promptly if any beneficial ownership by a United States person comes to his

attention. (2) Upon completion of the distribution of any Eurodollar certificates or participations therein, the lead or managing underwriter shall deliver to the issuing savings associations a certification as to the sale stating that to the knowledge of the underwriter no beneficial owner or owners of the Eurodollar certificate(s) or participants therein is a United States person; and, further, that the underwriter has not knowingly sold or offered for sale and will not sell or offer for sale, the Eurodollar certificate(s) or participations therein to any United States person.

(3) Upon issuance of any certificate under this section, the issuing savings association shall provide to the Office such information as the Office deems necessary to monitor effectively the use of the authority provided by this section.

(a) Requirements as to certificates.

Each Eurodollar certificate and
participation, including a temporary
Eurodollar certificate or participation,
shall bear on its face, in boldface type, a
legend substantially in the following
form:

This Eurodollar certificate has been issued pursuant to a regulation of the Office of Thrift Supervision, an agency of the United States government, which requires that the Eurodollar certificate be sold, and interest at the amount stated hereon paid, only to purchasers who are not United States nationals or residents, and may not be offered directly or indirectly or sold in the United States of America, its territories or possessions, or to persons who are nationals or residents thereof.

(f) Pooling of certificates.

Notwithstanding the provisions of § 571.25 of this chapter, a savings association may engage in pooling or participate in pooling funds, or soliciting or promoting pooled accounts, in connection with the issuance of a Eurodollar certificate in conformity with this section.

#### § 563.10 Earnings-based accounts.

- (a) Definition. An earnings-based account is any account that provides for the payment of interest which is determined, to any extent, directly or indirectly, with reference to an index based upon the profitability, earnings, cash-flow, appreciation, or other form of return on assets which are, directly or indirectly, owned by or under or within the control of the savings association ("contingent interest"): Provided, That earnings-based instruments are not issued accounts (as provided in section 545.11 of this chapter) if:
- (1) The fixed or guaranteed portion of the interest or return on such instruments is less than 66.667 percent of the average yield for AAA-rated corporate bonds ("Moody's seasoned") published in the issue of the Federal Reserve Board publication H15 (519) "Selected Interest Rates" most recently preceding the date of issuance of such instruments:
- (2) The instruments grant the investor an ownership interest of any kind, other than a security interest arising from operation of law, in such assets; or
- (3) The instruments put the investor's funds at risk by providing for negative interest or by limiting the obligation to

repay principal on the basis of asset

performance.

(b) Limitations. If authorized by applicable state law, a savings association may issue earnings-based accounts only in accordance with the

following conditions:

(1) The total outstanding amount of all such accounts issued by the savings association may not, as of the date of the issuance of any earnings-based account, exceed an amount equal to five percent of the savings association's assets, except that such amount may be increased to 20 percent of the savings association's assets with prior permission of the District Director pursuant to paragraph (c) of this section;

(2) The savings association is in compliance with its regulatory capital requirements under § 567.2(b) of this

subchapter;

(3) Assets the income or return on which is the basis for the index used in the accounts may only be loans secured

by real property;

(4) Only the savings association, and no other person, may exercise control over the selection or disposition of assets upon which the index is based or assets otherwise acquired in connection with the issuance of such accounts;

(5) No savings association or its agents shall, directly or indirectly:

(i) Employ any device, scheme, or

artifice to defraud.

- (ii) Make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances in which they were made, not misleading,
- (iii) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit on any person, in connection with the sale or issuance of any earnings-based

(iv) Provided, That the defenses available to an action under section 10b of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) shall be available to any person subject to an action under

this paragraph (b)(5):

(6) A savings association may not pay or commit to pay contingent interest in an amount greater than the amount of gross receipts, other than amounts attributable to repayment of principal, derived from the assets the return on which the interest index is based;

(7) The maturity, acceleration of maturity, mandatory redemption, or similar right or option with respect to an earnings-based account may not be conditioned upon the financial condition of the savings association or upon any supervisory or other regulatory action, including, but not limited to, the

appointment of a conservator or receiver, with respect to such savings association;

(8) No savings association shall issue, sell, or otherwise participate in the distribution of any earnings-based account the sale of which is accompanied by a security or right to

purchase a security; and

(9) The issuing savings association shall use all reasonable means to ensure that persons who hold or have a beneficial interest in such accounts do not have an interest of any kind in the assets used to calculate the contingent interest. Such means include, but are not limited to, the inclusion of an appropriate legend on the face of the account certificates.

(c) District Director permission for increased issuance. (1) The District Director may grant permission to a savings association to issue earningsbased accounts in an amount of up to 20 percent of the savings association's assets, upon consideration by the District Director of the following factors:

(i) Whether the savings association meets or exceeds the regulatory capital requirement specified in paragraph (d) of this section or any amount of regulatory capital required to be maintained in an applicable supervisory directive or operating agreement;

(ii) Whether the savings association has increased its total liabilities at an annual rate of greater than 25 percent during any three-month period in the 12 months preceding the date of application;

(iii) Whether the savings association's underwriting experience indicates an ability to adequately underwrite the loans anticipated to be used in calculating the index under the program;

(iv) Whether the savings association meets the asset-composition test imposed on a savings association seeking to qualify as a "domestic building and loan association" pursuant to section 7701(a)(19) of the Internal Revenue Code of 1954 (as amended);

(v) Whether there are no other bases for supervisory concern with respect to such savings association; and

(vi) Whether, under the terms of the issuance in question, and in fact, the savings association would retain a substantial economic interest in the indexed assets in proportion to the risks attending such issuance.

(2) Permission shall be deemed granted by the District Director 30 days after notification to the applicant that such application is complete, unless the applicant receives written notice from the District Director within such period that objection has been taken.

- (3) An application shall be deemed to be complete for purposes of this section when the District Director has received the following items:
- (i) A description of the anticipated and the maximum amounts of earningsbased accounts to be offered by the applicant;
- (ii) Information describing in detail the loans to be used in calculating the contingent interest on the certificates;
- (iii) A description and analysis of the savings association's underwriting and credit experience in the making of such
- (iv) The exact method of calculating contingent interest on the certificates;
- (v) Information showing the financial condition of the applicant including, but not limited to, the applicant's regulatory capital (under § 567.2(b) and paragraph (c)(1)(i) of this section;
- (vi) A detailed analysis showing the extent to which the proposed offering would affect the applicant's exposure to interest-rate and credit risk;
- (vii) Information describing the applicant's deposit growth over the preceding three calendar years; and
- (viii) A copy of a resolution adopted by the applicant's board of directors establishing a plan of operations designed, in conjunction with the offering, to reduce interest-rate and credit risk to the savings association.
- (d) For purposes of paragraph (c)(1)(i) of this section, the term "regulatory capital requirement" means:
- (1) An amount at least equal to three percent of all liabilities (i.e., total assets, net of the following: loans in process, specific reserves, and deferred credits other than deferred taxes; minus regulatory capital as defined by § 567.1 of this subchapter); or
- (2) For savings associations subject to the requirements of § 567.2(b)(2) of this subchapter, the applicable percentage of such liabilities required by § 567.2(b)(2) of this subchapter.
- (e) Effective date. This section shall be effective with respect to any instruments issued or sold on or after October 17, 1984, except that it shall not apply to accounts issued after such date under an earnings-based-accounts program for which a savings association had, prior to such date, received written notice of intent not to object to such issuance from the District Director.

#### Subpart B-Operation and Structure

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

(a) No savings association may:

(1) Merge or consolidate with any insured depository institution, or

(2) Directly or indirectly acquire the assets of, or assume liability to pay any deposits made in, any insured depository institution, without application to and approval by the

(b) No savings association may at any time make any other transfer, as defined in § 571.5(a) of this subchapter, of assets or savings account liabilities without application to and approval by the Office.

(c)(1) In determining whether to confer approval for a transaction under paragraph (a) or (b) of this section, the Office shall apply the criteria set out in § 571.5 of this subchapter and may impose any conditions it deems necessary or appropriate to insure conformity with those criteria and the

requirements of this section.

(2) Application for approval under this section shall be upon forms prescribed by the Office and shall contain such information as the Office may require, including appropriate information regarding fairness and legal, economic, managerial, financial, disclosure, accounting and tax aspects of the transaction. Where the filing party believes its application is eligible to be processed under paragraph (e) (1) or (2) of this section, the filing party shall also submit a brief summary of the proposed transaction and an affirmative statement that none of the factors specified in paragraph (e) of this section which would preclude automatic approval or action under delegated authority are present.

(d) Applications filed pursuant to paragraph (a) of this section shall follow the procedures set forth in § 543.2 of this

chapter, except that:

(1) Constituent associations in a transaction subject to paragraph (a) of this section shall file jointly and concurrently six copies of the application prepared pursuant to this section with the appropriate District Director(s), four of which should be labelled, respectively, "Department of Justice Copy," "Office of the Comptroller of the Currency Copy," "Federal Reserve Board Copy," and "Federal Deposit Insurance Corporation Copy," and two copies with the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

(2) Notice of any proposed transaction for which approval is required under paragraph (a) of this section shall, unless the Office finds that it must act immediately in order to prevent the

probable default of one of the savings associations involved, be published-

(i) No earlier than three calendar days before and no later than three calendar days after filing an application under paragraph (a) of this section, and thereafter on a weekly basis during the period allowed for furnishing reports under paragraph (d)(3) of this section;

(ii) Publication shall be made in the business section of a newspaper printed in the English language in the community in which the home offices of the disappearing and resulting savings associations are located; and if applicable, the community in which the home offices of the largest subsidiary savings association of the disappearing and resulting associations are located. If it is determined that the primary language of a significant number of adult residents of either community is a language other than English, the applicant may be required to publish the notification simultaneously in the

appropriate language(s).

(3) Unless the Office determines that action must be taken immediately in order to prevent the probable default of one of the savings associations involved, the Office shall request reports from the Attorney General, and the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, on the competitive factors involved in the merger. The reports shall be furnished within thirty calendar days of the date on which they are requested, or within ten calendar days of such date if the Office advised the Attorney General and the other three banking agencies that an emergency exists requiring expeditious action. The Office shall immediately notify the Attorney General of any approval of a merger pursuant to this section.

(4) If the Office has found that it must act immediately to prevent the probable default of one of the savings associations involved and the reports on the competitive factors have been dispensed with, the transaction may be consummated immediately upon approval by the Office and any applicable state regulatory authorities. If the Office has advised the Attorney General and the other three banking agencies of the existence of an emergency requiring expeditious action and has requested reports on the competitive factors within ten days, the transaction may not be consummated before the fifth calendar day after the date of approval by the Office. In all other cases, the transaction may not be consummated before the thirtieth

calendar day after the date of approval by the Office.

(e) Automatic approvals by District Director. (1) Applications filed pursuant to paragraphs (a) and (b) of this section, shall be deemed to be approved automatically by the Office 30 calendar days after the District Director sends written notice to the applicant that the application is complete, unless:

(i) The resulting savings association requests the granting of supervisory

forbearances;

(ii) The District Director recommends the imposition of non-standard conditions prior to approving the application;

(iii) The application has been substantially protested;

(iv) The District Director raises objections to the transaction;

(v) The resulting savings association would be one of the 3 largest depository institutions competing in the relevant geographic area where before the transaction there were 5 or fewer depository institutions, the resulting savings association would have 25 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 5 percent or more;

(vi) The resulting savings association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the transaction there were 6 to 11 depository institutions the resulting savings association would have 30 percent or more of the total deposits held by depositing institutions in the relevant geographic area, and the share of total deposits would have increased

by 10 percent or more;

(vii) The resulting savings association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the transaction there were 12 or more depository institutions, the resulting savings association would have 35 percent or more of the total deposits held by the depository institutions in the relevant geographic area, and the share of total deposits would have increased by 15 percent or more;

(viii) The Herfindahl-Hirschman Index (HHI) in the relevant geographic area was more than 1800 before the transaction, and the increase in the HHI used by the transaction would be 50 or

(ix) In a transaction involving potential competition, the District Director determines that the acquiring savings association is one of 3 or fewer potential entrants into the relevant geographic area;

(x) Both the acquiring and an acquired savings association have assets of \$1

billion or more;

(xi) The savings association that will be the resulting savings association in the transaction has a composite Community Reinvestment Act rating of less than satisfactory, or is otherwise seriously deficient with respect to the Office's nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of the District Director;

District Director;
(xii) The resulting savings
association's regulatory capital would
not at least equal the amount required
under the office's regulatory capital

requirements;

(xiii) Where goodwill has been included in the resulting association's assets, the applicant must submit an opinion of a Certified Public Accountant, satisfactory to the District Director, that its use and value are appropriate under, and accounted for by, generally accepted accounting principles;

(xiv) The transaction involves any supervisory or assistance agreement with the Office, the Resolution Trust Corporation, or the Federal Deposit

Insurance Corporation;

(xv) The transaction is part of a conversion under part 583b of this

Chapter;

(xvi) The District Director determines that the financial condition of the resulting savings association would not satisfy minimum financial standards as determined from time to time by the Senior Deputy Director for Supervision (Operations);

(xvii) The transaction raises a significant issue of law or policy; or

(xviii) The transaction is opposed by either constituent association or contested by a competing acquirer.

(2) Other actions by the District Director. The authority of the Office to approve, deny, or otherwise act on applications under paragraphs (a) or (b) of this section may be exercised by the District Director, or his or her designee, unless:

 (i) The transaction is opposed by either constituent association or contested by a competing acquirer;

(ii) The transaction is part of a conversion under part 563b of this

Chapter;

(iii) The transaction involves any supervisory or assistance agreement with the Office, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation; or

(iv) The transaction raises a significant issue of law or policy. (3) Joint actions by the Senior Deputy Director for Supervision (Operations) and the Chief Counsel. The authority of the Office to approve, deny or otherwise act upon applications under paragraphs (a) or (b) of this section may be exercised by the Senior Deputy Director for Supervision (Operations) with the concurrence of the Chief Counsel, or their respective designees, unless the transaction raises a significant issue of law or policy.

(f) Appeals. Denial of an application pursuant to delegated authority under this section may be appealed to the Director under the following procedures:

(1) Within 20 days after notification of the decision by the District Director or the Senior Deputy Director for Supervision (Operations), as the case may be, the applicant may notify the Office's Secretariat of the applicant's desire to appeal the decision. Three copies of such request for review must be submitted to the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with two of such copies addressed, respectively, to the attention of the Deputy Director for Supervision (Operations), and the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the denial is contended to be erroneous.

(2) If an applicant does not file an appeal within the time permitted under this section, any objection to the initial determination by the applicant is waived. A timely appeal filed with the Secretariat in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

(g) Definitions. (1) With regard to paragraphs (e)(1) (v) through (x) of this section, the following provisions apply.

(i) Depository institution includes savings associations, building and loan associations, homestead associations, cooperative banks, savings banks, commercial banks, and credit unions. The "largest depository institutions" are those whose percentage of total deposits in the relevant geographic area ranks one, two, or three. "Total deposits" includes all demand, savings, and time deposit accounts. An "insured depository institution" is a depository institution the accounts of which are insured by either the Savings

Association Insurance Fund or the Bank Insurance Fund.

(ii) A "relevant geographic area" is used as a proxy for the "relevant geographic market," which means the area within which the competitive effects of a merger may be evaluated. The relevant geographic area shall be delineated as follows:

(A) A county or similar political subdivision, an area smaller than a county, or an aggregation of counties within which the merging savings associations compete (the "home

county"):

(B) The commuting test. If, when using the area delineated in paragraph (g)(1)(ii) of this section, the merger does not meet the market share and concentration criteria set forth in paragraphs (e)(1) (v) through (x) of this section, the relevant geographic area shall be expanded to include an analysis of surrounding areas where the work force comes in and goes out of the home county on a regular basis.

(1) In a Standard Metropolitan
Statistical Area ("SMSA"), the relevant
geographic area will include any county
to which 20 percent of the home county's
work force commutes and any county
from which 20 percent of the work force
commutes to the home county. (These
calculations may be obtained from the

Census, Table P-2, Social Characteristics of the Population.)

(2) In a non-SMSA, the relevant geographic area will include any county to which 20 percent of the home county's workforce commutes and any other county in which depositors have access to depository institutions that are located approximately the same distance from their homes as are the depository institutions in the home county. (Data on households are available from the Census.)

(C) The advertising test. If, when using the area delineated in paragraph (g)(1)(ii) of this section, the merger does not meet the market share and concentration criteria set forth in paragraph (e)(1)(v) through (x) of this section, the relevant geographic area shall be further expanded to include counties where competition between savings associations is demonstrated by newspaper advertising. Where the volume of sales of a newspaper originating in a county other than the county of the savings association to be acquired equals 50 percent of the households of the county of the savings association to be acquired, the county from which the newspaper originates will be included in the analysis if the savings association to be acquired advertises regularly in that newspaper. (Data on households are available from the Census; data on sales are available from newspaper circulation offices.)

(2) Unless the context otherwise requires, for purposes of this section:

(i) The word "merger" shall also mean "purchase of assets" and "assumption of savings account liabilities;

(ii) The term "resulting savings association" shall also mean "acquiring

savings association;"

(iii) The terms "merging savings association" and "acquired savings association" shall also mean "selling savings association;" and

(iv) The term "transferring savings association" shall mean an association making a transfer, as defined in § 571.5(a) of this subchapter, of assets and or deposit liabilities in accordance with paragraph (b) of this section.

#### 8 563.24 Sales plans; giveaways.

Every applicant for the charter of a Federal savings association that uses salespersons, sales agencies, surplus certificates, or other sales plans shall submit, with its application, full details thereof. Any state chartered association that applies for insurance of accounts by the Federal Deposit Insurance Corporation and that uses salespersons, sales agencies, surplus certificates, or other sales plans shall, prior to the effective date of such insurance, submit full details thereof to the appropriate District Director or his or her designee. No savings association shall, directly or indirectly enter into, extend, or renew any contract, agreement, understanding, or arrangement that authorizes or permits any person other than such association itself to promise, offer, or give a give-away, or to pay or absorb any of the cost of a give-away promised, offered, or given for or in connection with the solicitation, the opening, or any increase of any account in such association, or which authorizes or permits any person other than such association itself to pay or to absorb any of the cost of any give-away advertising for or in connection with any such solicitation, opening, or increase; and no such association shall accept the opening or any increase of any account for or in connection with which any person other than such association gives a give-away or pays or absorbs any of the cost of any give-away advertising, or of any give-away given, for or in connection with any such solicitation, opening, or increase. As used in this section: the term "give" means to give, to sell or dispose of for less than full monetary value or with any agreement or undertaking, contingent or otherwise. for repurchase or redemption, whether total or partial, or to offer, promise, or agree to do any of the foregoing; the term "give-away" means any money, property, service, or other thing of value, whether tangible or intangible; and the term "account" means an account of a

type insurable by the Federal Deposit Insurance Corporation.

#### § 563.27 Advertising.

(a) Advertising interest and dividends on savings accounts. The following rules apply to advertisements, announcements, or solicitations made by a savings association, or any person or organization soliciting savings accounts on a savings association's behalf, relating to interest or dividends paid on a savings association's accounts:

(1) Annual rate of simple interest. Interest or dividend rates shall be stated in terms of annual rates of simple

interest or dividends.

(2) Percentage yield based on 1 year. If a percentage yield achieved by compounding interest or dividends during one year is stated, the annual rate of simple interest shall be stated with equal prominence, with reference to the basis of compounding. A percentage yield based on the effect of grace periods shall not be stated.

(3) Percentage yield based on more than 1 year. A total percentage yield, compounded or simple, based on more than 1 year, or an average annual percentage yield achieved by compounding during more than 1 year,

shall not be indicated.

(4) Time or amount requirements. If a stated rate is payable only on savings accounts that meet time or amount requirements, such requirements shall be clearly and conspicuously stated. If the time requirement for a stated rate exceeds 1 year, the required number of years shall be stated with equal prominence, with an indication of any lower rate(s) applicable if the savings account is withdrawn earlier.

(5) Penalty for early withdrawals. A savings association shall include a clear and conspicuous notice stating whether the association will or may impose a penalty for withdrawal from an account before maturity. Such notice may state, "A substantial penalty will (or may) be imposed for early withdrawal.'

(6) Profit. Interest or dividends paid on a savings account shall not be called

"profit."

(7) Accuracy of advertising. No representation concerning interest or dividends on savings accounts shall be

inaccurate or misleading.

(8) Gold. Any statement that any portion of interest or dividends is payable in gold (including gold coin). gold related instruments or securities, or an amount of money determined in any manner related to gold is prohibited: Provided, That such statement is permitted with respect to the payment of interest or dividends in gold coins

minted and issued by the United States

(b) Advertising of services, contracts, investments or financial condition must be accurate. (1) No savings association shall use advertising (which includes print or broadcast media, displays or signs, stationery, and all other promotional materials), or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

(2) Any advertising shall specifically indicate that a savings association is in fact a savings association; except that if the word "bank" is not used in the advertising of the association's name, the word "savings" need not be used in such advertising. No savings association shall advertise or hold itself out to the public as a commercial bank. Signs existing or ordered on May 4, 1984, depicting the name of the savings association may be used for as long as the savings association chooses to continue to use the corporate title in existence on that date, and may also be used on offices established or acquired after that date for the same period. Stationery and other promotional materials on hand as of that date are exempt until such time as the savings association needs to reorder such materials in the ordinary course of business.

### § 563.29 Name of association.

No savings association shall advertise under a name which includes the word "insured" in the name.

### § 563.32 Payment of trustee fees on pension trust accounts.

Notwithstanding any other provision of this subchapter, annual payment by a savings association of a nominal fee, even if computed with reference to the number of persons having interests in the trust, may be made to the trustee of a trust qualified under the Self-**Employed Individuals Tax Retirement** Act of 1962, as amended, during the period that the account for such trust is maintained in such savings association.

### § 563.33 Directors, officers, and employees.

(a) Directors.—(1) Requirements. The composition of the board of directors of a savings association must be in accordance with the following requirements:

(i) A majority of the directors must not be salaried officers or employees of the savings association or of any subsidiary or (except in the case of a savings association having 80% or more of any class of voting shares owned by a

holding company) any holding company affiliate thereof.

(ii) Not more than two of the directors may be members of the same immediate family.

(iii) Not more than one director may be an attorney with a particular law

firm.

(2) Prospective application. In the case of an association whose board of directors does not conform with any requirement set forth in paragraph (a)(1) of this section as of October 5, 1983, this paragraph (a) shall not prohibit the uninterrupted service, including reelection and re-appointment, of any person serving on the board of directors at that date.

(b) Other employment. No savings association or subsidiary thereof shall permit any salaried officer or employee to work during the hours of his or her employment by such association or subsidiary for any affiliated person of such association unless such affiliated person compensates such association or subsidiary for the time during which such officer or employee is engaged in such work.

### § 563.34 Deposit relationships involving affiliated persons.

No savings association or subsidiary thereof shall maintain a deposit relationship with any affiliated person of such association or with any financial institution or holding company affiliate thereof of which an affiliated person of such savings association is a director, if the maintenance of such deposit relationship has been specifically disapproved by the District Director. No such deposit relationship shall be established (including a new interlock involving an existing deposit relationship) without the prior written approval of the District Director. In taking action with respect to the maintenance or establishment of such deposit relationships, factors to be considered by the District Director will

(a) The size of the depository relative to the deposits maintained or to be maintained by such savings association

or subsidiary;
(b) The amount of the deposits
relative to the size of such savings
association or subsidiary;

(c) The need for the deposit relationship by such savings association or subsidiary and available alternative deposit relationships not involving affiliated persons;

(d) The extent to which affiliated persons have an interest in the

depository;

(e) Whether the deposit relationship has been approved by a disinterested

majority of the entire board of directors of such savings association or subsidiary;

(f) Any current supervisory problems involving such savings association or subsidiary and the affiliated persons having an interest in the depository;

(g) Whether the deposit relationship involves an active demand account;(h) Whether the deposit relationship

was established prior to July l, 1972; and
(i) Any other factors which may have
a detrimental effect on such savings
association or subsidiary.

### § 563.35 Restrictions involving loan services.

(a) Tie-in prohibitions. No savings association or service corporation affiliate thereof may grant any loan on the prior condition, agreement, or understanding that the borrower contract with any specific person or organization for the following:

(1) Insurance services (as an agent, broker, or underwriter), except insurance or a guarantee provided by a government agency or private mortgage

isurance;

(2) Building materials or construction services;

(3) Legal services rendered to the borrower;

(4) Services of a real estate agent or broker; or

(5) Real estate or property management services.

(b) Notice with respect to insurance on home loans. A savings association or subsidiary thereof shall notify the borrower in writing of his or her right to freely select the person or organization rendering the insurance services referred to in paragraph (a)(1) of this section in connection with a loan on a home (as defined in § 541.14 of this chapter) occupied or to be occupied by the borrower at or prior to the time of the written commitment to make such loan.

(c) Limitation on paragraphs (a) and (b) of this section. Notwithstanding paragraphs (a) and (b) of this section, a savings association or subsidiary thereof may refuse to make any loan if it believes on reasonable grounds that the insurance services provided by the person or organization selected by the borrower will afford insufficient protection to such association or subsidiary.

(d) Payment of attorney's fee by home borrowers. In connection with a loan on a home (as defined in § 541.14 of this chapter) occupied or to be occupied by the borrower, a savings association or subsidiary thereof may require such borrower to reimburse it for legal services rendered by its attorney, or to

directly pay such attorney for such services, only if:

 Such attorney's fee is limited to legal services attributable to processing and closing such loan (and not unrelated services performed for the savings association or subsidiary by the attorney);

(2) Such attorney's fee, if in excess of \$100, is supported by a statement provided to the borrower at or prior to

settlement which:

(i) describes the legal services being performed.

(ii) sets forth the time being spent by such attorney and the hourly rate or other basis for determining such fee,

(iii) states that the legal services are being performed on behalf of the savings association or subsidiary and not on behalf of the borrower, and

(iv) states that such services are being

paid for by the borrower;

(3) Such attorney's fee does not exceed that which is reasonable and commensurate with the legal services being performed; and

(4) Such attorney's fee is separately itemized on the loan settlement sheet and identified as a fee to the lender's

attorney.

#### § 563,36 [Reserved]

## § 563.37 Operation of service corporation, liability of savings association for debt of service corporation.

(a) General. Each savings association and service corporation thereof shall be operated in a manner which demonstrates to the public the separate corporate existence of the service corporation and the savings association. Regulations of the Office which apply both to savings associations and service corporations shall not be construed as requiring operation of a savings association and its service corporations

as a single entity.

(b) Service corporation debt. Every instrument evidencing borrowing by a service corporation shall indicate that

its parent savings association is not liable, or in the case of a service corporation owned by more than one savings association, that none of its parent savings associations is liable, except that no such statement is required if the loan is guaranteed by a parent savings association and the total amount of such guaranteed loan, together with all other guaranteed loans, direct loans, and equity risk investment by the savings association in its service corporations, does not exceed the maximum investment permitted by law

or regulation.
(c) Notice of new activity or acquisition or establishment of a service

corporation. Every savings association shall notify the Office and the FDIC not less than 30 days prior to the establishment or acquisition of any service corporation and not less than 30 days prior to the commencement of any new activity through a service corporation. Notice required under this paragraph (c) shall be made to the Office as follows: one copy of such notice shall be submitted to the Senior Deputy Director for Supervision (Operations) and one copy of such notice shall be submitted to the District Director. The notice requirement of this paragraph (c) is in addition to any application that may be required under § 545.74 of this chapter.

### § 563.38 Salvage power of savings association to assist service corporation.

(a) Salvage power and investment authority. No savings association, in the exercise of its salvage power, shall, without the prior approval of the Office, make any contribution, loan, or guarantee of a loan made by any other person to its service corporation, or invest in its service corporation or assume any of its liabilities, if such contribution, loan, investment, guarantee, or assumption of liability. together with such guaranteed loans, direct loans, contributions and equity risk investments by the savings association in its service corporations, would exceed the maximum investment otherwise permitted by law or regulation.

(b) Applications for approval. Each application by a savings association to the Office for its approval to make any such contribution, loan, investment, guarantee, or assumption of liability shall establish, to the satisfaction of the Office, in a written statement, that the action it proposes is for the protection of the savings association's investment and is consistent with safe, sound, and economical home financing. The application shall describe and discuss alternative solutions to the service corporation's financial problem including solutions which do not involve increased investment by the savings association, and contain such other information as the Office may require. In the case of a State-chartered savings association, such application shall be accompanied by an opinion of counsel that the proposed action is within the authority of the savings association. Every contribution, loan, investment, guarantee, or assumption of liability made pursuant to approval by the Office under this section shall comply with the terms and conditions of such approval.

#### § 563.39 Employment contracts.

(a) General. A savings association may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by an association's board of directors. An association shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the association or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the association. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) Required provisions. Each employment contract shall provide that:

(1) The association's board of directors may terminate the officer or employee's employment at any time, but any termination by the association's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the association's affairs by a notice served under section 8 (e)(3) or (g)(1) of Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(3) and (g)(1)) the association's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the association may in its discretion (i) pay

the officer or employee all or part of the compensation withheld while its contract obligations were suspended, and (ii) reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the association's affairs by an order issued under section 8 (e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(4) or (g)(1)), all obligations of the association under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall terminate as of the date of default, but this paragraph (b)(4) shall not affect any vested rights of the contracting parties: Provided, that this paragraph (b)(4) need not be included in an employment contract if prior written approval is secured from the Director or his or her designee.

(5) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary of the continued operation of the association

(i) by the Director or his or her designee, at the time the Federal Deposit Insurance Corporation or Resolution Trust Corporation enters into an agreement to provide assistance to or on behalf of the association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(ii) by the Director or his or her designee, at the time the Director or his or her designee approves a supervisory merger to resolve problems related to operation of the association or when the association is determined by the Director to be in an unsafe or unsound condition.

Any rights of the parties that have already vested, however, shall not be affected by such action.

## § 563.40 Restrictions on loan procurement fees, kickbacks and unearned fees.

(a) Loan procurement fees. No affiliated person of a savings association may receive, either directly or indirectly, from such association, any subsidiary thereof, or any other source any fee or other compensation of any kind in connection with the procurement of any loan from such association or subsidiary thereof.

(b) Kickbacks and unearned fees. The prohibitions contained in sections 8(a) and 8(b) of the Real Estate Settlement

Procedures Act of 1974 (Pub. L. 93–533) shall apply to any fee, kickback, thing of value, and any portion, split or percentage of any charge, either directly or indirectly, given to or accepted by a savings association or subsidiary or affiliated person thereof, in connection with any loan on real property made by a savings association or subsidiary thereof, without regard to whether the loan is within the term "federally related mortgage loan", as defined in section 3(1) of the Act.

## § 563.41 Restrictions on real property transactions with affiliates and affiliated persons.

(a) Scope of section. Sections 10 and 11 of the Home Owners' Loan Act, as amended ("HOLA") (12 U.S.C. 1467a and 1468) and the Office's regulations thereunder, shall exclusively govern transactions between a savings association subsidiary of a savings and loan holding company and such savings association's affiliates, as defined in section 11 of the HOLA (other than officers, directors, and natural persons that are controlling persons). All other transactions between a savings association and its affiliates, executive officers, directors, controlling persons, and their related interests, shall be subject both to the provisions of this section and to section 11 of the HOLA. to the extent applicable.

(b) Restrictions. No savings association or subsidiary thereof may, directly or indirectly, purchase or lease from, jointly own with, sell or lease to, an affiliated person of the association any interest in real or personal property unless the transaction is determined by the District Director to be fair to, and in the best interests of, the savings

association or subsidiary.

(c) Conditions. Transactions permitted under paragraph (b) of this section shall—

(1) Receive prior written approval of the District Director indicating that the terms of such transactions are fair to, and in the best interests of, the savings association or subsidiary;

(2) Be supported by an independent appraisal not prepared by an affiliated person or employee of the savings association or subsidiary; and

(3) Be approved in advance by a resolution duly adopted with full disclosure by at least a majority (with no director having an interest in the transaction voting) of the entire board of directors of the association or subsidiary (or alternatively by a majority of the total votes eligible to be cast by the voting members of the savings association at a meeting called for such purpose, with no votes cast by

proxies not solicited for such purpose). Full disclosure must include the affiliated person's source of financing for the real property involved in the transaction, including whether the savings association or any subsidiary thereof has a deposit relationship with any financial institution or holding company affiliate thereof providing the financing.

## § 563.43 Restrictions on loans and other investments involving affiliates and affiliated persons.

(a) Scope of section. Sections 10 and 11 of the Home Owners' Loan Act, as amended ("HOLA") (12 U.S.C. 1467a and 1468), and the Office's regulations thereunder, shall exclusively govern transactions between a savings association subsidiary of a savings and loan holding company and such savings association's affiliates, as defined in section 11 of the HOLA (other than officers, directors, and natural persons that are controlling persons). All other transactions between a savings association and its affiliates, executive officers, directors, controlling persons, and their related interests, shall be subject both to the provisions of this section and to section 11 of the HOLA, to the extent applicable.

(b) Restrictions concerning loans and other transactions with affiliated persons. (1) No savings association or subsidiary thereof may, either directly or indirectly, make a loan to any affiliated person of such savings association or purchase such a loan, except for loans in the ordinary course of business of such an association or subsidiary which do not involve more than the normal risk of collectibility or present other unfavorable features, and which do not exceed the loan amount which would be available to members of the general public of similar credit status applying for loans, of the

following types:

 (i) Loans secured by the principal residence of an affiliated person;

(ii) Loans secured by savings accounts maintained by the affiliated person at

the association; and

(iii) Loans for constructing, adding to, improving, altering, repairing, equipping, or furnishing the principal residence of the affiliated person, loans in the form of overdraft protection for NOW accounts, loans for payment of educational expenses, consumer loans, and extensions of customer credit connection with credit cards.

(2) A loan described in paragraphs (b)(1)(i) and (b)(1)(iii) of this section must be approved in advance by a resolution duly adopted after full disclosure by a least a majority (with no

director having an interest in the transaction voting) of the entire board of directors of such savings association. Full disclosure must include whether the loan is made on substantially the same terms, including interest rate and collateral, as those prevailing at the time for comparable loans to members of the general public.

(3) An association may make loans described in paragraph (b)(1) of this section at an interest rate not below its current cost of funds, including all savings accounts and borrowings (except that in the case of a loan secured by a savings account, the interest rate shall be at least one percent above the rate of return on the savings account): Provided, that the resolution required by paragraph (b)(2) of this section must set forth:

(i) The savings association's current cost of funds, including the elements of

its computation; and

(ii) A justification of the more favorable rate, if the loan is to an affiliated person other than a salaried officer or employee of the savings association or its subsidiary.

(4) With respect to a loan described by paragraph (b)(1) of this section made to a salaried officer or employee of the association or its subsidiary, the approval requirement of paragraph (b)(3) of this section will be satisfied if the loan conforms with a blanketpreapproval resolution of the board specifying the terms on which loans may be made to all officers or employees, or a class of such officers or employees, and the loan documents set forth the association's current cost of funds, including the elements of its computation. A savings association may not use a blanket-preapproval resolution to make loans described by paragraph (b)(1)(iii) of this section to a single affiliated person in excess of \$100,000 in the aggregate.

(5) A savings association may extend credit for commercial purposes to an affiliated person which may in no event exceed an aggregate of \$100,000. Any such extension of credit shall not involve more than the normal risk of collectibility or present other unfavorable features, and must be at terms, amount, and interest rate substantially the same as those prevailing at the same time for comparable loans made to members of the general public of similar credit status. A savings association must comply with the requirements of paragraph (b)(2) of this section with respect to any extensions of commercial credit exceeding an aggregate amount of \$10,000. A savings association shall at

the time of approval by the board of directors of such a transaction notify its District Director and his or her designee of the transaction and all other outstanding extensions of commercial credit to the affiliated person.

(6) No savings association or subsidiary thereof may invest, either directly or indirectly, in the stock, bonds, notes, or other securities of any affiliated person of such association.

(7) No savings association or subsidiary thereof may, directly or indirectly, purchase securities under a repurchase agreement from any affiliated person of such association.

(c) Prohibitions concerning loan transactions with third persons. No savings association or subsidiary thereof may, either directly or indirectly:

(1) Make any loan to, or purchase (other than through a secondary market such as the Federal Home Loan Mortgage Corporation) any loan made to, any third party on the security of real property purchased from any affiliated person of such association, unless the property was a single-family dwelling owned and occupied by the affiliated person as his or her principal residence;

(2) Make a loan to, or purchase a loan made to, any third party secured by real property with respect to which any affiliated person of such association

holds a security interest;

(3) Accept the stock, bonds, notes, or other securities of any affiliated person of such association as security for a loan to any third party made or purchased by such association or subsidiary thereof;

(4) Maintain a compensating balance with respect to a loan made by any third party to any affiliated person of such

association; or

(5) Enter into any guarantee arrangement or make any take-out commitment with respect to a loan made by any third party to any affiliated person of such savings association.

(6) Notwithstanding paragraphs (b) and (c)(1) through (c)(5) of this section, transactions of the type that would be permissible under the standards described in 12 CFR 250.250 shall not be

prohibited.

(d) Waiver. The restrictions in paragraph (b) and (c) of this section may be waived by the Director or his or her designee in supervisory cases if he or she determines that the terms of the transaction in question are fair to, and in the best interests of, the savings association or subsidiary. A supervisory case includes a merger instituted for supervisory reasons, and action taken pursuant to, or in order to obviate the necessity of, proceedings by the Office or the Corporation pursuant to section

13 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823).

#### 8 563.44 Loans involving mortgage Insurance.

(a) Definitions. For purposes of this section:

(1) The terms "affiliate", "company", "control", "director" and "officer" have the same meanings given to them by §§ 583.2, 583.6, 583.7, 583.9, 583.14 of this chapter, respectively.

(2) The term "ownership of an equity security by a director, officer, or controlling person" shall include beneficial ownership through:

(i) A spouse, child, or spouse of a child of such director, officer, or controlling person;

(ii) A broker or other nominee or

agent; and

(iii) A company controlled by such director, officer or controlling person.

(3) The term "company" means a parent company of a mortgage insurance company if such mortgage insurance company represents more than 15 percent of such company's consolidated net worth at the close of its preceding fiscal year or of its consolidated net earnings for such fiscal year. For purposes of the foregoing, "consolidated net worth" and "consolidated net earnings" shall be determined in accordance with generally accepted accounting principles.
(b) Prohibitions—(1) Commissions,

fees and other compensation. No savings association or service corporation affiliate thereof shall insure any loan with a mortgage insurance company if, either directly or indirectly, any commission, fee or other compensation is to be paid to or received by such association, any such affiliate thereof, or any director, officer, or employee of such association or affiliate in connection with the issuance or renewal of mortgage insurance by such company.

(2) Deposit accounts. No savings association or service corporation affiliate thereof shall insure any loan with a mortgage insurance company if such company maintains any type of deposit account at such association.

(3) Officers of mortgage insurance companies. No savings association or service corporation affiliate thereof shall insure any loan with a mortgage insurance company if any officer or employee of such company, or any parent company thereof, is a director, officer or controlling person of such association or any service corporation affiliate thereof.

(4) Investment in mortgage insurance companies. Except as provided in paragraph (c) of this section, no savings

association or service corporation affiliate thereof shall insure any loan with a mortgage insurance company if the amount of investment in such mortgage insurance company, or any parent company thereof, by such association, its service corporation affiliates and the directors, officers, and controlling persons of such association or such affiliates is sufficient to give rise to a conflict in interest in the placement or renewal of mortgage insurance. Absent a compelling justification to the contrary, the Office will presume a conflict of interest situation to exist:

(i) If such association, any service corporation affiliate thereof, or any director, officer, or controlling person of such association or affiliate holds, directly or indirectly, equity securities of such mortgage insurance company or any parent company thereof having a cost in excess of \$50,000, or representing more than one percent of any class of equity securities of such company if its asset are less than \$50 million, or representing more than one-half percent of any class of equity securities of such company if its assets equal or exceed

\$50 million; or

(ii) If such association, all service corporation affiliates thereof and all the directors, officers, and controlling persons of such association and all such affiliates hold in the aggregate, directly or indirectly, equity securities of such mortgage insurance company or any parent company thereof having a cost in excess of \$100,000, or representing more than two percent of any class of equity securities of such company whose assets are less than \$50 million, or representing more than one percent of any class of equity securities of such company if its assets equal or exceed \$50 million.

(c) Exception. Paragraph (b)(4) of this section does not apply to investment in any mortgage insurance company in existence on March 11, 1976, which is entirely owned directly or indirectly by savings associations if such investment made or increased after December 21, 1978, does not exceed two percent of such company's outstanding equity securities.

### § 563.45 Disclosure.

(a) Annual disclosure requirements. Except as provided in this paragraph (a) and paragraph (b) of this section, a savings association shall transmit to its voting members at least 20 calendar days prior to its 1978 annual meeting, and every annual meeting thereafter, an annual report meeting the requirements of Form AR. In lieu of transmitting such annual report, a savings association

may, not less than 30 calendar days prior to its annual meeting, transmit a notice of meeting to its voting members clearly stating that such annual report will be promptly furnished to such person upon request, and provide a postage prepaid card for making such request. For purposes of complying with this paragraph (a), a savings association may, if necessary, determine its voting members as of a date prior to the actual record date for voting at its annual meeting. A savings association is not required by this paragraph (a) to transmit such annual report or notice of meeting to any voting member with less than two votes, unless requested by such member.

(b) Exemptions from paragraph (a). Paragraph (a) of this section shall not apply to a savings association:

(1) If such association has total assets of less than \$15,000,000 as of the end of its audit period immediately preceding the annual meeting, except as provided in paragraph (d) of this section; or

(2) In the case of a stock-chartered savings association, if such savings association is subject to the proxy solicitation requirements of § 563d.1 of

this chapter; or

(3) If the affiliated persons of such association have not engaged in any transactions since the beginning of such immediately preceding audit period which must be disclosed under Item 6(e) of Form AR.

(c) Filing requirements. Six copies of each annual report, prepared pursuant to paragraph (a) of this section, and any notice of meeting transmitted to voting members pursuant thereto, shall be publicly filed with the Office concurrently with or prior to transmission of such report or notice pursuant to paragraph (a) of this section. Three of such copies shall be mailed or delivered to the District Director. If the District Director determines that the material so filed fails to comply in any material respect with the requirements of Form AR, the District Director may require such material for three years thereafter to be filed with the District Director and authorized for use prior to being transmitted to voting members.

(d) Annual disclosure requirements for associations under \$15 million in assets. A savings association which is not exempted from paragraph (a) by paragraph (b)(2) of this section, and which has less than \$15,000,000 in assets as of the end of any audit period (beginning with the audit period immediately preceding its 1978 annual meeting), shall prepare an annual report meeting the requirements of Form AR with respect to each such audit period as to which such association does not

conform with paragraph (b)(3) of this section. Three copies of each annual report required by the preceding sentence shall be publicly filed with the Office at least 20 days prior to the annual meeting following the audit period as to which such report was prepared. Such copies shall be mailed or delivered to the District Director. If the District Director determines that an annual report prepared by a savings association pursuant to this paragraph (d) reveals practices or events during the audit period covered by such report which, if continued, the District Director believes should be disclosed to persons having voting rights in such association, the District Director may require such association to comply with the requirements of paragraph (a) of this section in connection with the annual report for its next audit period if such a report is required by this paragraph (d). If an annual report prepared pursuant to this paragraph (d) reveals information of the type described in the immediately preceding sentence, the District Director will notify the association in writing within 60 days of the filing of such report with the District Director that such association must submit its annual report (if any) for its next audit period to the District Director for a determination as to whether such association must comply with the requirements of paragraph (a) of this section in connection with such report.

(e) Disclosure not a restriction on Office's general authority. Disclosure under this section does not restrict the Office's authority to take appropriate action as to unsafe or unsound practices, or violations of law or regulation, respecting the matters

disclosed.

(f) Additional scope of "affiliated person". As used in this section and in Form AR, the term "affiliated person" includes any person who has been nominated to be a director of the savings association as if such person had been a director since the beginning of the association's last audit period.

### Form AR (Annual Report Form)—General Instructions

Each annual report required under § 563.45 shall, to the extent applicable, include the information called for under each of the items below. In preparation of the annual report, particular attention should be given to the definitions in Part 561 of this chapter.

This form is not to be used as a blank form to be filled in, nor is it intended to prescribe a form for presentation of material in the statement. Its purpose is solely to prescribe the information required to be set forth in the statement; any additional information that the savings association deems appropriate may be included.

#### Information Required In Statement

Item 1—Nominees and Directors. (a)
Furnish the following information, in tabular form to the extent practicable, with respect to each person nominated for election as a director and each other person whose term of office as a director will continue after the meeting:

(1) State the name and age of each such person, the nature of any immediate family relationship between him or her and other directors, nominees and officers, when his or her term of office or the term of office for which he or she is a nominee will expire, and all other positions and offices with the savings association presently held by him or her, and indicate which persons are nominees for election as directors at the meeting.

(2) State his or her present principal occupation or employment and give the name and principal business of any corporation or other organization in which such employment is carried on. Furnish similar information as to all of his or her principal occupations or employments during the last five years, unless he or she is now a director and was elected to his or her present term of office at an annual meeting with respect to which an annual report meeting the requirements of Form AR was furnished.

(3) If he or she is or has previously been a director of the association, state the period or periods during which he or she has served as

such.

(4) In the case of a stock association, state, as of the most recent practicable date, the approximate amount of each class of equity securities (other than directors' qualifying shares) of the association, or any parent company or subsidiary thereof, beneficially owned by him or her, either directly or indirectly. If he or she disclaims beneficial ownership of any such securities, make a statement to that effect.

(b) If any nominee for election as a director is proposed to be elected pursuant to any arrangement or understanding between the nominee and any other person or persons except the directors and officers of the savings association acting solely in those capacities, name such other person or persons and describe briefly such arrangement or understanding.

(c) State whether the composition of the association's board of directors will be in compliance with the guidelines set forth in \$ 563.33(a), and if not, the extent to which the composition of such board will not comply

with such guidelines.

Item 2—Officers. List the names and ages of all officers of such association and all persons chosen to become officers; state the nature of any immediate family relationship between them; indicate all positions and offices with the association held by each such person; if such person has served as an officer of the association for less than five years, state the period during which he or she has served as an officer; and if such person is employed pursuant to an employment contract, state the period of such contract and whether it may be terminated for cause by the association.

Item 3-Voting rights. Describe the voting rights of each class of persons having voting

rights (e.g., accountholders, borrowers and/or stockholders) and the approximate number of votes to which each such class of persons is entitled; state the date as of which the record of voting members entitled to vote at the meeting will be determined; and in the case of a stock association, describe any

cumulative voting rights.

Item 4—Proxies and revocability thereof. State the method by which proxies are solicited by management for the election of directors (e.g., by annual solicitation or by having savings accountholders sign a proxy of indefinite duration in conjunction with opening their accounts). Also, state the names of the persons, and their positions and offices with the association, holding these proxies, and whether the persons giving these proxies have the power to revoke them. If the right of revocation before these proxies are exercised is limited or is subject to compliance with any formal procedures, briefly describe such limitation or procedures.

Item 5—Change in control. (a) Name each controlling person of the association and include the number of proxies held by such person and, in the case of a stock association, the number of voting shares of stock or other voting securities owned, controlled, or held with power to vote by such person.

(b) Describe any change in controlling persons of the association which has occurred since the beginning of its last audit

period.

(c) Describe any contractual arrangement, known to the association, including any pledge of voting securities of the association or any parent company thereof, the operation of the terms of which may at a subsequent date result in a change of control of the association.

Item 6—Remuneration and other transactions with management and others—
(a) Direct remuneration. Furnish the following information in substantially the tabular form indicated below as to all direct remuneration paid by the association and its subsidiaries during the association's letest audit period to the following persons for services in all capacities:

(1) Each director of the association whose aggregate direct remuneration exceeded \$40,000, and each of the three highest paid officers of the association whose aggregate direct remuneration exceeded that amount, naming each director and officer.

(2) All directors and officers of the association as a group without naming them, but stating the number of persons included.

Name of individual or number of persons in

group—(A)
Capacities in which remuneration was received—(B)

Aggregate direct remuneration-(C)

Instructions. 1. This item applies to any person who was a director or officer of the association at any time during the period specified. However, information need not be given for any portion of the period during which such person was not a director or officer.

2. The information is to be given on an accrual basis, if practicable. The tables required by this paragraph and paragraph (b) may be combined if the association so

 Do not include remuneration paid to a partnership in which any director or officer was a partner. But see paragraph (e) below.

(b) Annuities, pensions, and retirement benefits. Furnish the following information, in substantially the tabular form indicated, as to all annuity, pension, or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the association or any subsidiary thereof to each director or officer named in answer to paragraph (a)(1) and to all directors and officers of the association who are eligible for such benefits, as a group, stating the number of persons in the group without naming them:

Amount set aside or accrued during association's last audit period—(B) Estimated annual benefits upon retirement—

Instructions. 1. The term "plan" in this paragraph and in paragraph (c) includes all plans, contracts, authorizations, or arrangements, whether or not set forth in any formal document.

2. Column (B) need not be answered with respect to payments computed on an actuarial basis under any plan which provides for fixed benefits in the event of retirement at a specific age or after a specified number of years of service. In such case, Columns (A) and (C) need not be answered with respect to directors and officers as a group.

 The information called for by Column (C) may be given in a table showing the annual benefits payable upon retirement to persons

in specified salary classifications.

4. In the case of any plan (other than those specified in Instruction 2) where the amount set aside each year depends upon the amount of earnings or profits of the association or its subsidiaries for such period or a prior period (or where otherwise impracticable to state the estimated annual benefits upon retirement) there shall be set forth, in lieu of the information called for by Column (C), the aggregate amount set aside or accrued to date, unless impracticable to do so, in which case the method of computing such benefits shall be stated. In addition, furnish a brief description of the material terms of the plan, including the method used in computing the savings association's contribution, and the amount set aside or accrued during the savings association's last audit period for all officers and directors as a group, indicating the number of persons in such group without

(c) Other remuneration. Describe briefly all remuneration payments (other than payments reported under paragraph (a) or (b)) proposed to be made in the future, directly or indirectly, by the association or any subsidiary thereof pursuant to any existing plan or arrangement to (1) each director or officer named in answer to paragraph (a)(1), naming each such person, and (2) all directors and officers of the association as a group, without naming them.

Instruction. Information need not be included as to payments to be made for, or benefits to be received from, group life or accident insurance, group hospitalization or

similar group payments or benefits. If it is impracticable to state the amount of remuneration payments proposed to be made, the aggregate amount set aside or accrued to date in respect of such payments shall be stated, together with an explanation of the basis for future payments.

(d) Loans. State as to each affiliated person of the savings association who was indebted to the association or any subsidiary thereof at any time since the beginning of the last audit period of the association (1) the largest aggregate amount of indebtedness outstanding at any time during such period, (2) the nature of the indebtedness and of the transaction in which it was incurred, (3) the amount thereof outstanding as of the latest practicable date, and (4) the rate of interest paid or charged thereon.

Instructions. 1. Include the name of each person whose indebtedness is described and the nature of the relationship by reason of which the information is required to be given.

2. Disclosure under this Item 6(d) shall not be required where the transaction consists of a loan by the association or subsidiary that (i) is of the type covered by an exception in § 563.43(b), and (ii) is made on substantially the same terms, including interest rate and collateral, as those prevailing at the time for comparable transactions with other than affiliated persons. In the case of a loan made to an officer who is not a director or controlling person of the association, disclosure of the loan transaction need not be made under this Item 6(d) if (i) disclosure would not have been required under the preceding sentence except that the interest rate being paid is less than the rate for comparable loans to other than affiliated persons at the time the loan was made, and (ii) the aggregate principal balance of all loans at less than such comparable interest rates to such officers as a group outstanding at the end of the last audit period of the association is stated, together with a brief description of the policy of the association or subsidiary in making such loans.

(e) Transactions where certain persons have a material interest. Describe briefly any transactions since the beginning of the last audit period, and any presently proposed transactions, to which the association or any of its subsidiaries was or is to be a party, in which any affiliated person of the association had or is to have a direct or indirect material interest, naming such person and stating his or her relationship to the association, the nature of his or her interest in the transaction and, where practicable, the amount of such

interest.

Instructions. 1. This item applies to any person who was an affiliated person of the association at any time during the period specified. However, information need not be given for any portion of the period during which such person was not an affiliated person.

2. In connection with a loan transaction to which the association or a subsidiary thereof is a party, an affiliated person of the association acting as attorney or appraiser for the association or subsidiary, or as escrow agent, builder or real estate agent/broker, will be deemed to have a direct or

indirect interest in such loan transaction. unless such person acts in such capacity or capacities as a full time salaried officer or employee of the association or subsidiary without additional or separate compensation for individual loan transactions. An affiliated person acting as an insurance agent/broker or underwriter, supplier of title examination or abstract services, or building materials supplier will be deemed to have a direct or indirect interest in such loan transaction if the association or subsidiary had knowledge that such person would act in such capacity at the time the loan commitment was made. In determining whether the interest of the affiliated person in such a loan transaction is material, all payments made during an audit period of the association to the affiliated person for acting in one or more of the foregoing capacities shall be aggregated for purposes of the trigger amount under Instruction 4(c).

3. A person will be deemed to have a direct or indirect material interest in a loan transaction to which the association or a subsidiary thereof was or is to be a party if the loan is to finance the purchase of real property from such person.

4. No information need be given in answer to this item as to any transaction where—

(a) The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services at rates or charges fixed in conformity with law or governmental authority; but information shall be given notwithstanding approval of the transaction by the Office or other governmental authority;

(b) The transaction involves services as a transfer agent, registrar, trustee under a corporate trust indenture, or similar services; but information shall be given as to transactions involving services as a bank depository if the amount of the deposits of the association and its subsidiaries averaged on a monthly basis an amount of excess of the trigger figure under Instruction 4(c) during the last audit period of the association.

(c) The amount involved in the transaction or series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, does not exceed .02% of the association's assets, provided that such amount shall not be less than \$106,000 nor exceed \$500,000.

(d) The interest of the affiliated person arises solely from ownership of securities of the savings association and the affiliated person receives an extra or special benefit not shared on a pro rata basis by all holders of securities of the class; or

(e) The transaction consists of indebtedness to the association or subsidiary disclosed under Item 6(d) or exempt from disclosure under Instruction 2 to Item 6(d).

(f) The transaction is in compliance with § 563.41 of this part.

engages in a transaction with the association

or a subsidiary thereof may have an indirect

5. It should be noted that this item calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity, which interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this Item where—

(a) The interest arises only (i) from such person's position as a director of another corporation or organization (other than a partnership) which is a party to the transaction, or (ii) from direct or indirect ownership by such person and all other persons specified in subparagraphs (1) and (2) above, in the aggregate, of less than a 10 percent equity interest in another person (other than a partnership) which is a party to the transaction, or (iii) from both such position and ownership;

(b) The interest arises only from such person's position as a limited partner in a partnership in which he or she and all other persons specified in subparagraphs (1) and (2) above had an interest of less than 10 percent; or

(c) The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest, but excluding a general partnership interest) or a creditor interest in another person which is a party to the transaction with the association or any subsidiary thereof and the transaction is not material to such other person.

6. The amount of the interest of any specified person shall be computed without regard to the amount of profit or loss involved in the transaction. Where it is not practicable to state the approximate amount of the interest, the approximate amount involved in the transaction shall be indicated.

7. The foregoing instructions specify certain transactions and interests as to which information may be omitted in answering this Item. There may be situations where, although the foregoing instructions do not expressly authorize nondisclosure, the interest of an affiliated person in the particular transaction or series of transactions is not a material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this Item.

8. Information should be included as to any material underwriting discounts and commissions upon the sale of securities by the association where any of the affiliated persons were or are to be a principal underwriter or is a controlling person or a member of a firm that was or is to be a principal underwriter. Information need not be given concerning ordinary management fees paid by underwriters to a managing underwriter pursuant to an agreement among underwriters the parties to which do not include the association or any subsidiary thereof.

9. A savings association that has engaged in a transaction that must be disclosed pursuant to Item 6(e) of Form AR may be granted a waiver by the District Director, upon an affirmative showing that the association—

 Entered into the transaction believing in good faith that the transaction would not trigger disclosure;

2. Upon learning that the transaction would trigger disclosure initiated appropriate action to reverse the transaction or to eliminate

those aspects of the transaction that necessitate disclosure;

3. Has compiled, prior to the subject transaction, a record of satisfactory compliance with applicable law, including rules, regulations, and supervisory directives of the Office; and

4. Has not, by involvement in the subject transaction, engaged in a transaction contrary to the best interests of the association or its members.

Waiver of the Form AR disclosure requirements under this paragraph does not constitute approval of the transaction nor does it limit the Officer's enforcement authority to suspend, remove, prohibit, or bring cease-and-desist proceedings against any person who has committed a breach of fiduciary duty to a savings association or its nembers.

(f) Options to purchase securities. In the case of stock associations, furnish the following information as to all options to purchase securities, from the association or any parent company or subsidiary thereof, which were granted to or exercised by the following persons since the beginning of the association's last audit period and as to all options held by such persons as of the latest practicable date: (i) each director or officer named in answer to paragraph (a)(1) of this ltem, naming each such person; and (ii) all directors and officers of the association as a group, without naming them:

(1) As to options granted, state (i) the title and amount of securities called for, (ii) the prices, expiration dates, and material provision; and (iii) the market value of the securities called for on the granting date.

(2) As to options exercised, state (i) the title and amount of securities purchased; (ii) the aggregate purchase price; and (iii) the aggregate market value of the securities purchased on the date of purchase.

(3) As to all unexercised options held as of the latest practicable date, regardless of when such options where granted, state (i) the title and aggregate amount of securities called for; (ii) the average option price per share; and (iii) the per share market price of the securities subject to the option, as of the latest practicable date.

Instructions. 1. The term "options" as used in this paragraph (f) includes all options, warrants, or rights, other than those issued to security holders as such on a pro rata basis. Where the average option price per share is called for, the weighted average price per share shall be given.

The extension, regranting, or material amendment of options shall be deemed the granting of options within the meaning of this paragraph.

3. This item need not be answered with respect to options granted, exercised, or outstanding, as may be specified therein, where the total market value (i) on the granting date of the securities called for by all options granted during the period specified; (ii) on the dates of purchase of all securities purchased through the exercise of options during the period specified; or (iii) as of the latest practicable date of the securities called for by all options held at such time, does not exceed \$10,000 for any officer or

director named in answer to paragraph (a)(1) of this Item, or \$40,000 for all officers and

directors as a group.

(g) Transactions involving certain pension, retirement, savings and other similar plans. Describe briefly any transactions since the beginning of the association's last audit period or any presently proposed transaction. to which any pension, retirement, savings, or similar plan provided by the association or any parent company or subsidiary thereof, was or is to be a party, in which any affiliated person of the association had or is to have a direct or indirect material interest, naming such person and stating his or her relation to the association, the nature of his or her interest in the transaction, and, where practicable, the amount of such interest.

Instructions. 1. Without limiting the general meaning of the term "transaction" there shall be included in answer to this item any remuneration received or any loans received or outstanding during the period, or proposed

to be received.

2. No information need be given in answer to paragraph (g) with respect to-

(a) Payments to the plan, or payments to beneficiaries, pursuant to the terms of the

(b) Payments of remuneration for services not in excess of five percent of the aggregate remuneration received by the affiliated person during the association's last audit period from the association and its subsidiaries.

Item 7-Brief description of business. Furnish a brief description of the business done by the association and its subsidiaries during the association's most recent audit period, including information concerning any material developments during such period.

Item 8-Financial statements. Furnish a statement of financial condition of the association as of the end of its last two audit periods and related statements of income, retained earnings and changes in financial position for such periods. Such financial statements shall be certified by independent public accountants (except as otherwise provided in § 563.170), and accompanied by the accountants' report. Such financial statement may be presented on a consolidated basis with subsidiaries of the savings association. If the savings association's audit period ends more than 120 days before its annual meeting, financial statements of the type described above shall also be furnished on an unaudited basis as of a date and for the related period ending within 120 days of its annual meeting.

#### § 563.46 Charge-off of consumer credit classified as a loss.

When consumer credit is classified as a loss, as defined in § 561.13 of this subchapter, it shall be charged against the savings association's current earnings.

### § 563.47 Pension plans.

(a) General. No savings association or service corporation thereof shall sponsor an employee pension plan which, because of unreasonable costs or any other reason, could lead to material

financial loss or damage to the sponsor. For purposes of this section, an employee pension plan is defined in section 3(2) of the Employee Retirement Income Security Act of 1974, as amended. The prospective obligation or liability of a plan sponsor to each plan participant shall be stated in or determinable from the plan, and, for a defined benefit plan, shall also be based upon an actuarial estimate of future experience under the plan.

(b) Funding. Actuarial cost methods permitted under the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1954, as amended, shall be used to determine

plan funding.

(c) Plan amendment. A plan may be amended to provide reasonable annual cost-of-living increases to retired participants: Provided, That (1) Any such increase shall be for a period and amount determined by the sponsor's board of directors, but in no event shall it exceed the annual increase in the Consumer Price Index published by the Bureau of Labor Statistics; and (2) No increase shall be granted unless (i) anticipated charges to net income for future periods have first been found by such board of directors to be reasonable and are documented by appropriate resolution and supporting analysis; and (ii) the increase will not reduce the association's regulatory capital below its regulatory capital requirement.

(d) Termination. The plan shall permit the sponsor's board of directors and its successors to terminate such plan. Notice of intent to terminate shall be filed with the District Director at least 60 days prior to the proposed termination

date.

(e) Records. Each savings association or service corporation maintaining a plan not subject to recordkeeping and reporting requirements of the Employee Retirement Income Security Act of 1974. and the Internal Revenue Code of 1954, as amended, shall establish and maintain records containing the

(1) Plan description;

(2) Schedule of participants and beneficiaries:

(3) Schedule of participants and beneficiaries' rights and obligations; (4) Plan's financial statements; and

(5) Except for defined contribution plans, an opinion signed by an enrolled actuary (as defined by the Employee Retirement Income Security Act of 1974) affirming that actuarial assumptions in the aggregate are reasonable, take into account the plan's experience and expectations, and represent the actuary's best estimate of the plan's projected experiences.

#### § 563.48 Flood disaster protection.

(a) General. This section implements, in part, sections 4012a (b) and (c), 4104a, and 4106(b) of Title 42 of the United States Code. This section does not apply to a service corporation or a holding company parent of a savings association. As used in this section, the term "loan" includes an installment sale contract.

(b) Flood insurance—(1) Requirement. A savings association shall not make (including purchase, except as provided in paragraph (d) of this section), increase, extend, or renew any loan (other than a loan closed after March 1, 1974, as to which there was outstanding at the close of March 1, 1974, a commitment to make such loan) secured by improved real estate or a mobile home located or to be located in an area identified by the Director of the Federal **Emergency Management Agency** ("Director") as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended ("Act"), unless the property securing such loan is covered for the term of the loan by flood insurance at least equal to the outstanding principal balance of the loan or the maximum coverage available with respect to the particular type of property under the Act, whichever is less.

(2) Exception. However, flood insurance is not required on any Stateowned property covered under an adequate State policy of self-insurance satisfactory to the Director. The Director is required by statute to publish and periodically revise a list of States which have such adequate self-insurance.

(c) Records of compliance. Each savings association shall maintain in connection with all loans secured by improved real estate or a mobile home sufficient records to indicate the method used by it to determine whether such loans require flood insurance under this section.

(d) Purchase of loans. This section does not prohibit purchase after March 1, 1974, of a loan if:

(1) As to a loan closed before that date, the loan has not thereafter been increased, extended, or renewed; or

(2) As to a loan closed on or after that date, the loan was closed under a loan commitment outstanding on that date and the loan has not thereafter been increased, extended or renewed.

(e) Notice of special flood hazard area and availability of Federal disaster relief assistance. A savings association shall, as a condition of making (including purchasing), increasing, extending, or renewing any loan secured

by improved real estate or a mobile home located or to be located in an area identified by the Secretary as having special flood hazards, mail or deliver as soon as feasible, but not less than 10 days before closing of the transaction for not later than the savings association's commitment, if any, if the commitment and closing are less than 10 days apart) a written notice to the borrower stating that the property securing the loan is or will be located in an area so identified; or in lieu of such notification, a savings association may obtain satisfactory written assurances that a seller or lessor has notified the borrower, prior to execution of any agreement for sale or lease, that the property securing the loan is or will be located in an area so identified. A savings association shall similarly notify the borrower whether, in the event of damage to the property caused by flooding in a Federally declared disaster, Federal disaster relief assistance will be available for the property. A savings association shall require the borrower, prior to closing, to provide the savings association with a written acknowledgment that the property securing the loan is or will be located in an area so identified and the borrower has received the aboverequired notice regarding Federal disaster relief assistance.

### Subpart C-Securities and Borrowings

### § 563.72 Form, return, and maturity of securities.

Securities of any savings association which are issued in connection with any borrowing which is in conformity with § 563.80 or issued with specific prior approval of the Office are, as to form, return, and maturity hereby approved by the Office.

#### § 563.74 Mutual capital certificates.

- (a) General. No savings association that is in the mutual form shall issue mutual capital certificates pursuant to this section or amend the terms of such certificates unless it has obtained written approval of the Office. No approval shall be granted unless the proposed issuance of the mutual capital certificates and the form and manner of filing of the application are in accordance with the provisions of this section.
- (b) Eligibility Requirements. The Office will consider and process an application for approval of the issuance of mutual capital certificates pursuant to this section only if the issuance is authorized by applicable law and regulation and is not inconsistent with

any provision of the applicant's charter, constitution or bylaws.

- (c) Application form; supporting information. An application for approval of the issuance of mutual capital certificates pursuant to this section shall be in the form prescribed by the Office. Such application and instructions may be obtained from the District Director or his or her designee. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.
- (d) Charter amendment. No application for approval of the issuance of mutual capital certificates pursuant to this section may be filed unless the amendment to the mutual association's charter, constitution or bylaws or other actions conferring such authority shall have been approved pursuant to the procedures and requirements set forth in the mutual association's charter, constitution or bylaws, or as may otherwise be required by applicable law.
- (e) Filing requirements. The application for issuance of mutual capital certificates shall be publicly filed with the Office by transmitting concurrently three copies to the District Director and the original and three copies to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.
- (f) Supervisory objection. No application or approval of the issuance of mutual capital certificates pursuant to this section shall be approved if, in the opinion of the Office, the policies, condition, or operation of the applicant afford a basis for supervisory objection to the application.
- (g) Limitation on offering period.
  Following the date of the approval of the application by the Office, the association shall have an offering period of not more than one year in which to complete the sale of the mutual capital certificates issued pursuant to this section. The Office may in its discretion extend such offering period if a written request showing good cause for such extension is filled with it not later than 30 days before the expiration of such offering period or any extension thereof.
- (h) Reports. Within 30 days after completion of the sale of mutual capital certificates issued pursuant to this section, the association shall transmit concurrently to the District Director and to the Corporate and Securities Division a written report stating the total dollar

amount of securities sold, and the amount of net proceeds received by the association, and within 90 days it shall transmit a written report stating the number of purchasers.

(i) Requirements as to mutual capital certificates—(1) Form of certificate.
Each mutual capital certificate and any governing agreement evidencing a mutual capital certificate issued by an association pursuant to this section:

(i) Shall bear on its face, in bold-face type, the following legend: "This security is not a savings account or a deposit and it is not insured by the United States or any agency or fund of the United States"; and

(ii) shall clearly state that the certificate is subject to the requirements of § 563.74(i)(2).

(2) Legal requirements. Mutual capital certificates issued pursuant to this section shall:

(i) Be subordinate to all claims against the association having the same priority as savings accounts, savings certificates, debt obligations or any higher priority;

(ii) Not be eligible for use as collateral for any loan made by the issuing association;

(iii) Constitute a claim in liquidation not exceeding the face value plus accrued dividends of the certificates, on the general reserves, surplus and undivided profits of the association remaining after the payment in full of all savings accounts, savings certificates and debt obligations;

(iv) Be entitled to the payment of dividends, which may be fixed, variable, participating, or cumulative, or any combination thereof, only if, when and as declared by the association's board of directors out of funds legally available for that purpose, provided that no dividend may be declared or paid without the approval of the Office if such payment would cause the association to fail to meet its regulatory capital requirement under § 567.2 of this subchapter, and provided further that no dividend may be paid if such payment would constitute a violation of 12 U.S.C. 1828(b);

(v) Not be redeemable, except: (A) Where the dollar weighted average term of each issue of mutual capital certificates to be redeemed is seven years or more and redemption is to be made pursuant to a redemption schedule; (B) in the event of a merger, consolidation or reorganization approved by the Office; or (C) where the funds for redemption are raised by the issuance of mutual capital certificates approved pursuant to this section, or in conjunction with the issuance of capital stock pursuant to Part 563b of this

subchapter: Provided, that mandatory redemption shall not be required; that mutual capital certificates shall not be redeemable on the demand or at the option of the holder; and that mutual capital certificates shall not receive, benefit from, be credited with or otherwise be entitled to or due payments in or for redemption if such payments would cause the association to fail to meet its regulatory capital requirement under § 567.2 of this subchapter; And Provided further, for the purposes of this paragraph (i)(2)(v), the "dollar weighted average term" of an issue of mutual capital certificates shall be the sum of the products calculated for each year that the mutual capital certificates in the issue have been redeemed or are scheduled to be redeemed. Each product shall be calculated by multiplying the number of years of each mutual capital certificate of a given term by a fraction, the numerator of which shall be the total dollar amount of each mutual capital certificate in the issue with the same term and the denominator of which shall be the total dollar amount of mutual capital certificates in the entire issue;

(vi) Not have preemptive rights;
(vii) Not have voting rights, except
that an association may provide for

voting rights if:

(A) The savings association fails to pay dividends for a minimum of three consecutive dividend periods, and then the holders of the class or classes of mutual capital certificates granted such voting rights, and voting as a single class, with one vote for each outstanding certificate, may elect by a majority vote a maximum of one-third of the association's board of directors, the directors so elected to serve until the next annual meeting of the association succeeding the payment of all current and past dividends;

(B) Any merger, consolidation, or reorganization (except in a supervisory case) is sought to be authorized, where the issuing association is not the survivor, provided that the regulatory capital of the resulting association available for payment of any class of mutual capital certificate on liquidation is less than the regulatory capital available for such class prior to the merger, consolidation, or reorganization;

(C) Action is sought to be authorized which would create any class of mutual capital certificates having a preference or priority over an outstanding class or classes of mutual capital certificates;

(D) Any action is sought to be authorized which would adversely change the specific terms of any class of mutual capital certificates; (E) Action is sought to be authorized which would increase the number of a class of mutual capital certificates, or the number of a class of mutual capital certificates ranking prior to or on parity with another class of mutual capital certificates; or

(F) Action is sought which would authorize the issuance of an additional class or classes of mutual capital certificates without the association having met specific financial standards;

(viii) Not constitute an obligation of the association and shall confer no rights which would give rise to any claim of or action for default;

(ix) Not be convertible into any account, security, or interest, except that mutual capital certificates may be surrendered in exchange for preferred stock issued in connection with the conversion of the issuing savings association to the stock form pursuant to Part 563b of this subchapter, provided that the preferred stock shall have substantially the same voting rights, designations, preferences and relative, participating optional, or other special rights, and qualifications, limitations, and restrictions, as the mutual capital certificates exchanged for the preferred stock.

(x) Provide for charging of losses after the exhaustion of all other items in the regulatory capital account.

### § 563.75 Mandatorily redeemable preferred stock.

(a) General. No savings association shall issue mandatorily redeemable preferred stock includable in regulatory capital pursuant to this section or amend the terms of such preferred stock unless it has obtained the written approval of the Office. Approval of the issuance under this section, in order to qualify as regulatory capital under § 567.1 of this subchapter, may be obtained either before or after the preferred stock is issued, but no approval shall be granted unless the issuance of the preferred stock and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) Eligibility requirements. In determining whether the Office will process an application by a savings association for approval of the issuance of mandatorily redeemable preferred stock includable in regulatory capital pursuant to this section, the Office will consider the following factors:

(1) Whether the issuance of such preferred stock by the applicant is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or bylaws;

(2) Whether, in the opinion of the Office, the overall policies, condition, and operation of the applicant do not afford a basis for supervisory objection to the application. Bases for supervisory objection may include the following:

(i) Regulatory capital, without regard to the amount of any mandatorily redeemable preferred stock to be included in regulatory capital, does not meet the requirements of § 567.2;

(ii) Losses have not been offset by specific reserves to the extent required pursuant to § 563.172 of this part;

(iii) Actual and anticipated income from operations, after distribution of earnings to the holders of saving accounts, payment of dividends on outstanding equity securities and payment of interest on borrowings but before income taxes, is not demonstrably sufficient for payment of dividends and redemption price, discount, and related expenses of the proposed issue; and

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be, to parties other than savings

associations.

- (c) Application form; supporting information. An application for approval of the issuance of mandatorily redeemed preferred stock by a savings association pursuant to this section shall be in the form prescribed by the Office or, if no such form has been promulgated, may be in the form prescribed by the Office for the issuance of subordinated debentures, in which case all references therein to "subordinated debt," "debt service" or "debt discount" shall be changed to, respectively, "mandatorily redeemable preferred stock," "debt or redemption service," and "redemption discount" and all citation therein to § 563.81 changed to corresponding provisions, if any, of § 563.75. Such application and instructions may be obtained from the District Director. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.
- (d) Requirements as to securities.

  Mandatorily redeemable preferred stock issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements, not including paragraph (d)(1)(i) of this section which is not

eligible for waiver, are waived by the Office.

(1) Form of certificate. Each certificate evidencing mandatorily redeemable preferred stock issued by a savings association pursuant to this section shall:

(i) Bear on its face, in bold-face type, the following legend: "This security is not a savings account or deposit and it is not insured by the United States or any agency or fund of the United States";

(ii) Clearly state that the security is unsecured and is not eligible as collateral for any loan by the issuing association;

(iii) State or refer to a document stating the limitations upon payment of dividends imposed by 12 U.S.C. 1828(b); and

(iv) State or refer to a document stating that no voluntary redemption, other than scheduled redemptions, may be made by the association without the approval of the Office if the association is not in compliance with the regulatory capital requirements of § 567.2 or if after giving effect to such redemption the association would fail to meet such regulatory capital requirements.

(2) Limitation as to term. No mandatorily redeemable preferred stock issued by a savings association pursuant to this section shall have an original period to required redemption of less than seven years. During the first six years that such a security is outstanding, the total of all required purchase-fund payments, required reserve allocations and required redemptions with respect to the portion of such six years that have elapsed shall at no time exceed the original redemption price thereof multiplied by a fraction the numerator of which is the number of years that have elapsed since the issuance of the security and the denominator of which is the number of years covered by the original period to required redemption.

(e) Filing of application. The application for approval of the issuance of mandatorily redeemable preferred stock under this section shall be filed with the Office by transmitting the original and two copies of the application and all supporting documents to the District Director.

(f) Additional requirements. The Office may impose on the applicant such requirements or conditions with regard to the securities or the offering or issuance thereof as it may deem necessary or desirable for the protection of purchasers, the applicant, the Office, or the Savings Association Insurance Fund or the Bank Insurance Fund, as appropriate.

(g) Limitation on offering period. Following the date of approval of the application by the Office, the association shall have an offering period of not more than one year in which to complete the sale of the mandatorily redeemable preferred stock issued pursuant to this section. The Office may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any previous extension thereof.

(h) Reports. Within 30 days after completion of the sale of the mandatorily redeemable preferred stock issued pursuant to prior approval under this section, the association shall transmit a written report to the District Director stating the number of purchasers, the total dollar amount of securities sold, and the amount of new proceeds received by the association.

(i) Delegations. The Senior Deputy Director for Supervision (Operations) or his or her designee, with the concurrence of the Chief Counsel, or his or her designee, are authorized to:

(1) Approve any mandatorily redeemable preferred stock applications filed pursuant to this section if they are in compliance with regulatory requirements or waivers thereof, and

(2) Except for denial of the application, otherwise act on the Director's behalf under any provision of this section, unless they are of the opinion that the application involves policy considerations which warrant formal consideration by the Director.

### § 563.80 Borrowing limitations.

(a) General. Except as the Office otherwise may permit by advice in writing, a savings association may borrow only in accordance with the provisions of this section.
(b) Amount of borrowing. A savings

association may borrow up to the amount authorized by the laws under which the savings association operates.

(c) Security. An association may give security for borrowings subject to any requirements imposed by the Office or the FDIC regarding notice of default on borrowings and any FDIC right of first refusal to purchase collateral.

(d) Required statement for all securities evidencing outside borrowings. Each security shall bear on its face, in a prominent place, the following legend: "This security is not a savings account or a deposit and it is not insured by the United States or any agency or fund of the United States.'

(e) Filing requirements for outside borrowings with maturities in excess of one year. (1) Unless the savings

association meets its regulatory capital requirement, it shall, at least ten business days prior to issuance, file with the District Director or his or her designee a notice of intent to issue securities evidencing such borrowings. Such notice shall contain a summary of the items of the security, including:

(i) Principal amount of the securities;

(ii) Anticipated interest rate range and price range at which the securities are to be sold;

(iii) Minimum denomination;

(iv) Stated and average effective maturity;

(v) Mandatory and optional prepayment provisions;

(vi) Description, amount, and maintenance of collateral if any; (vii) Trustee provisions if any;

(viii) Events of default and remedies of default;

(ix) Any provisions which restrict, conditionally or otherwise, the operations of the association.

(2) The District Director or his or her designee shall have ten (10) business days after receipt of such filing to object to the issuance of such securities. The District Director or his or her designee shall object if in his or her judgment the terms or covenants of the proposed issue place unreasonable burdens on, or convey to the security holders undue control over, the operations of the association. If no objection is taken, the savings association shall have one hundred twenty (120) calendar days within which to issue such securities. If objection is taken, the District Director or his or her designee shall promptly cause the question of such issuance to be submitted to the Director or his or her designee for decision.

(f) Note accounts. For purposes of this section, note accounts are not borrowings.

#### § 563.81 Issuance of subordinated debt securities.

(a) General. No savings association shall issue subordinated debt securities pursuant to this section or amend the terms of such securities unless it has obtained written approval of the Office. Approval of the issue under this section, in order to meet the requirements of § 567.1, may be obtained either before or after the securities are issued, but no approval shall be granted unless issuance of the securities and the form and manner of filing of the application are in accordance with the provisions of this section.

(b) Eligibility requirements. In determining whether the Office will process an application by a savings association for approval of the issuance of subordinated debt securities pursuant to this section, the Office will consider the following factors:

(1) Whether the issuance of such securities by the applicant is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or

bylaws; and

(2) Whether in the opinion of the Office, the overall policies, condition, and operation of the applicant do not afford a basis for supervisory objection to the application. Under the Director,s oversight, the Senior Deputy Director for Supervision (Policy) of the Office shall establish Guidelines for the District Directors to apply in exercising authority delegated to them in considering applications under this section. These Guidelines shall identify supervisory bases that District Directors may use to object to the inclusion of specific subordinated debt issues as regulatory capital. Such Guidelines shall constitute illustrative but not exclusive bases for supervisory objection to subordinated debt applications. The Senior Deputy Director for Supervision (Policy) may modify such Guidelines from time to time as appropriate. Any such changes to the Guidelines shall be effective for those applications filed after the date of the changes to the Guidelines and for those applications submitted for approval but not yet deemed "complete."

(3) Whether the issuance of such securities by the applicant in the transaction and any related transactions will result in a transfer of risk from the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be, to parties other than savings associations. In this connection, the issuance of subordinated debt securities shall not be deemed to result in a sufficient transfer of risk if such securities or any indenture or related agreement pursuant to which they are issued provide for events of default or include other provisions that could result in a mandatory prepayment of principal by declaration or otherwise, other than events of default arising out of the obligor's failure to make timely payment of interest and principal, its failure to comply with reasonable financial, operating, and maintenance covenants of a type that are customarily included in indentures relating to publicly offered issues of debt securities, and events of default relating to certain events of bankruptcy or insolvency, receivership and similar events.

(c) Application form; supporting information. An application for approval of the issuance of subordinated debt securities by a savings association

pursuant to this section shall be in the form prescribed by the Office. Such application and instructions may be obtained from the District Director. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) Requirements as to securities. Subordinated debt securities issued pursuant to this section shall meet all of the following requirements unless one or more of such requirements, not including paragraphs (d)(1)(i)(A) and (d)(1)(ii) of this section which are not eligible for waiver, are waived by the Office.

 Form of certificate. Each certificate evidencing subordinated debt issued by a savings association pursuant to this

section shall:

(i) Bear on its face, in bold-face type,

the following legends:

(A) "This security is not a savings account or deposit and it is not insured by the United States or any agency or fund of the United States"; and

(B) "Absent prior written approval by the Office, this security is not eligible for purchase by any savings association or a corporate affiliate thereof, except that this security may be purchased by a corporate affiliate of the issuer or by any diversified savings and loan holding company and any non-savings association subsidiary thereof."

(ii) Clearly state that the security (A) is subordinated on liquidation, as to principal, interest, and premium, if any, to all claims (including post-default interest) against the savings association having the same priority as savings account holders or any higher priority;

(B) is unsecured by the assets of the issuing association, or any of its

affiliates; and

(C) is not eligible as collateral for any loan by the issuing association.

(iii) State or refer to a document stating the terms under which the issuing savings association may prepay the obligation, which shall include at least the right to prepay without premium or other penalty during the fifteen months immediately prior to the maturity date;

(iv) State or refer to a document stating that no voluntary prepayment of principal shall be made and that no payment of principal shall be accelerated without the approval of the office, if the association is failing meet its regulatory capital requirement or if after giving effect to such payment the association would fail to meet its regulatory capital requirement;

(v) State the limitations upon payment of interest imposed by 12 U.S.C. 1828(b); and

(vi) Set forth, in the certificate and the purchase agreement or indenture, precisely the following statement:

Notwithstanding anything to the contrary in this certificate (or in any related document); (A) if the FDIC or Resolution Trust Corporation ("RTC") shall be appointed receiver for the issuer of this certificate (the "issuer") and in its capacity as such shall cause the issuer to merge with or into another financial institution, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another financial institution or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more other financial institutions, neither the FDIC nor the RTC shall have any obligation, either in its capacity as receiver or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligation represented by this certificate in whole or in part by any financial institution or institutions which results from any such merger or which has purchased or otherwise acquired from the FDIC or RTC as receiver for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with the FDIC or RTC, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by a financial institution with or into which the issuer may have been merged, as described in this subparagraph (A), and/or by one or more financial institutions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by the FDIC or RTC as receiver for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in accordance with the procedures and priorities set forth in any applicable receivership regulations or in orders of the FDIC or RTC relating to such receivership. (B) In the event that the obligation represented by this certificate is assumed in full by another financial institution, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with the FDIC or RTC assume all or a portion of the liabilities of the issuer, and payment or provision for payment shall have been made in respect of all matured installments of interests upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by acceleration, then any default caused by the appointment of a receiver for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded. (C) This security is not eligible to be purchased or held by any savings association or corporate affiliate thereof except that this security may be purchased or held by a

corporate affiliate of the issuer or by a diversified savings and loan holding company and its non-savings association subsidiaries. The issuer of this security may not recognize on its transfer books any transfer made to a savings association or any corporate affiliate thereof (except as provided in the preceding sentence) and will not be obligated to make any payments of principal or interest on this security if the owner of this security is a savings association or any corporate affiliate thereof (except as provided in the preceding sentence).

(2) Limitation as to term. No subordinated debt security issued by a savings association pursuant to this section shall have an original period to maturity of less than 7 years. During the first six years that such a security is outstanding, the total of all required sinking fund payments, other required prepayments and required reserve allocations with respect to the portion of such six years as have elapsed shall at no time exceed the original principal amount thereof multiplied by a fraction the numerator of which is the number of years which have elapsed since the issuance of the security and the denominator of which is the number of years covered by the original period to

(3) Limitations on sale to certain associations. (i) No savings association may sell any subordinated debt securities issued pursuant to this section to a Federal Home Loan Bank or, except with prior written approval of the Office in a supervisory case, to the FDIC or

RTC; and

(ii) Without the prior written approval of the Office, no savings association may sell, either directly or indirectly through an underwriter or otherwise, any subordinated debt securities issued pursuant to this section to a savings association or any corporate affiliate thereof, except that a savings association may sell such securities to its corporate affiliates or to a diversified savings and loan holding company and its non-savings association subsidiaries.

(4) Indenture. An issuer must use an indenture, as described herein, for subordinated debt securities offered pursuant to this section. Such an indenture must provide for the appointment of a trustee other than the obligor or an affiliate of the obligor (as defined in 12 CFR 583.2) and provide for the collective enforcement of the rights and remedies of the security holders, if the aggregate amount of debt securities "publicly offered" (sales in a private non-public offering as defined in 12 CFR 563g.4 are excluded) and sold by a single obligor in any consecutive twelve month period exceeds \$2,000,000 and/or \$5,000,000 in any consecutive thirty-six month period.

(e) Filing of application. The application for approval of the issuance of subordinated debt securities under this section is filed with the Office by transmitting the original and three copies of the application and all supporting documents to the association's District Director.

(f) Additional requirements. The Office may impose on the applicant such requirements or conditions with regard to the securities or the offering or issuance thereof as it may deem necessary or desirable for the protection of purchasers, the applicant, the Office, or the Savings Association Insurance Fund or the Bank Insurance Fund, as the

case may be.

(g) Limitation on offering period.
Following the date of the approval of the application by the Office, the association shall have an offering period of not more than one year in which to complete the sale of the subordinated debt securities issued pursuant to this section. The Office may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any previous extension thereof.

(h) Reports. Within 30 days after completion of the sale of the subordinated debt securities issued pursuant to prior approval under this section, the savings association shall transmit a written report to the District Director stating the number of purchasers, the total dollar amount of securities sold, and the amount of net proceeds received by the savings association. The association's report shall clearly state the amount of subordinated debt, net of all expenses, that the association intends to be counted as regulatory capital.

(i) Delegation of authority. Unless a subordinated debt application involves a significant issue of law or policy or would establish a precedent of national significance, the District Director is

authorized:

(1) To approve an application filed pursuant to this section, if the application is in compliance with regulatory requirements, and

(2) To deny a subordinated debt application.

Whoever is authorized to approve a subordinated debt application is also authorized to grant a request pursuant to paragraph (g) of this section for an extension of time for up to six months. All such approved extensions of time taken together may not exceed one year from the date of original approval of the subordinated debt application.

(j) Appeals. Denial of an application by a District Director pursuant to paragraph (i) of this section or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section in the approval of an application may be appealed under the following procedures: within 30 days after notification of the District Director's decision as provided for in this section, the applicant must file a written request for review with the Senior Deputy Director for Supervision (Operations) stating the applicant's desire to appeal the District Director's decision. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the District Director's denial is contended to be erroneous. Three copies of such request for review must be submitted to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. One copy of such request should be addressed to the attention of the "Senior Deputy Director for Supervision (Operations)"; and one copy to the attention of "Chief Counsel, Corporate and Securities Division". Also, one copy shall be sent to the District Director. The District Director shall thereupon forward to the Senior Deputy Director for Supervision (Operations) his or her record or a copy thereof used as a basis for his or her determination together with any other information believed by the District Director to be helpful in reviewing his or her determination. If an applicant does not file a request for review within the time permitted under this section, any objection to the initial determination by the District Director is waived. A timely filing of a request for review with the Senior Deputy Director for Supervision (Operations) in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination. With the concurrence of the Chief Counsel, or his or her designee, the Senior Deputy Director for Supervision (Operations) shall decide each appeal from a denial of an application under 12 CFR 563.81 by a District Director or the inclusion of any non-standard condition(s) not set forth in paragraph (k) of this section. With the concurrence of the Chief Counsel, or his or her designee, the Senior Deputy Director for Supervision (Operations) shall prepare and send to the applicant a written response to the applicant's request for review. Such written response shall be deemed to be a final agency action by the Office. If the

Senior Deputy Director for Supervision (Operations) in his or her sole discretion is of the opinion that the appeal involves policy considerations that warrant resolution by the Director, the Senior Deputy Director for Supervision (Operations) shall submit the application to the Director for his or her determination. In the event that the Senior Deputy Director for Supervision (Operations) fails to obtain the concurrence of the Chief Counsel, or his or her designee, the Senior Deputy Director for Supervision (Operations) shall present the matter to the Director for his or her determination.

(k) Conditions of approval. Approvals of subordinated debt applications shall be subject to the following conditions:

(1) Where securities are to be sold pursuant to an offering circular required to be filed with the Office pursuant to 12 CFR 563g.2, and where such offering circular has not yet been declared effective prior to the date of approval of the subordinated debt application, the offering circular in the form declared effective shall not disclose any material adverse information concerning the applicant's business, operations, prospects, or financial condition not disclosed in the latest form of offering circular filed as an exhibit to the application;

(2) The applicant shall submit to the District Director, no later than 30 days from the completion of the sale of the securities, evidence of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the subordinated debt

securities;

(3) The applicant shall submit to the District Director no later than 30 days from the completion of the sale of the securities, the report(s) required by 12 CFR 563.81(h) and the following additional items:

(i) Three copies of an executed form of the securities issued pursuant to the subject application and a copy of any related agreement or indenture governing the issuance of the securities;

(ii) A certificate from the principal executive officer of the applicant which states that to the best of his or her knowledge none of the securities issued pursuant to the subject application were sold to any association whose accounts are insured by the Savings Association Insurance Fund, or a corporate affiliate thereof, except as permitted by 12 CFR 563.81:

(4) That as of the date of approval, there have been no material changes with respect to the information disclosed in the application as submitted to the Office;

(5) The applicant shall submit an application and receive prior written approval of the District Director for any post-approval amendment to the subordinated debt securities or any related indenture if:

(i) The proposed amendment modifies or is inconsistent with any provision of the securities, or the indenture, which is required to be included therein by the Office's regulations as may then be in effect or would result in a transfer of risk to the applicant or the Savings Association Insurance Fund or the Bank Insurance Fund, as appropriate; and

(ii) All or a portion of the proceeds from the issuance and sale of the securities would continue to be included in the regulatory capital of the applicant following adoption of the amendment;

(6) The applicant shall submit to the District Director promptly after execution, one copy of each postapproval amendment to the securities or the related indenture, and if prior approval of such amendment was not obtained, shall also state the reason(s) such prior approval was not required;

(7) Before any offers or sales of the subordinated debt are made on the premises of the association or its affiliates, the applicant shall submit to the District Director a set of policies and procedures for such sale of the subordinated debt satisfactory to the District Director.

### § 563.84 Transfer and repurchase of government securities.

(a) A savings association shall not issue repurchase agreement obligations in denominations under \$100,000 with a maturity of 90 days or more evidencing an indebtedness arising from a transfer of direct obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States or any agency thereof that the savings association is obligated to repurchase, unless such obligations are issued to financial institutions the accounts or deposits of which are insured by the Federal Deposit Insurance Corporation or to a broker or dealer registered with the Securities and Exchange Commission.

b) Any repurchase agreement obligation under \$100,000 with a maturity of less than 90 days shall meet the following requirements.

(1) Legend. Each repurchase agreement and all advertisements and offering documents relating to repurchase agreements shall state, on their face, in plainly legible form, the following legend: "This obligation is not a savings account or a deposit and is not insured by the Federal Deposit Insurance Corporation."

(2) Prohibited representations. A savings association issuing repurchase agreements shall not use in its agreements, advertisements, or offering documents the terms "guaranteed," "no risk," "account," "deposit," "withdraw" or other terms which imply that the repurchase agreement is insured or guaranteed by the United States government, an agency of the United States government, or any third party; or the term "fund" or other terms which imply that the repurchase agreement is an interest in an investment company.

(3) Security interest. The interest of a repurchase agreement purchaser in the security or securities underlying the repurchase agreement shall constitute a perfected security interest under

applicable state law.

(4) Value of collateral. The market value of the security or securities underlying a repurchase agreement shall be at least equal to the principal amount of the issuing savings association's repurchase agreement obligation as of a date certain in each succeeding month of the original or renewed term of the

repurchase agreement.

(5) Disclosure. A savings association issuing repurchase agreements to the public shall provide each prospective repurchase agreement purchaser with an offering document which shall contain full and accurate disclosure of all material information regarding the repurchase agreement and the issuing savings association. Any material change in any of the material representations set forth in the offering document shall be reflected in a revised offering document that shall be provided to purchasers before any renewal or automatic renewal of a repurchase agreement may be effected. A savings association that has a regulatory capital deficiency under paragraph (b)(7) of this section shall be subject to the requirements of part 563g of this subchapter, except that the following financial statements may be substituted for those required to be included in an offering circular required under part 563g of this subchapter:

(i) The savings association's audited statements of condition and operations for its last fiscal year prepared in accordance with the requirements of

§ 563c.1 of this subchapter;

(ii) On a comparative basis, the savings association's latest unaudited statement of condition for the quarter ending within 135 days of any sale, renewal, or automatic renewal of a repurchase agreement, and an unaudited statement of operations for the period

then ended, prepared in accordance with the requirements of § 563c.1 of this subchapter; and

(iii) The savings association's latest monthly financial report filed with the Office.

(6) Renewal; notice of applicable interest rates. The maximum term of a repurchase agreement shall be 89 days. Unless otherwise provided for by the terms of a repurchase agreement, automatic renewals effected within an 89-day period from the date of execution, renewal, or automatic renewal of a repurchase agreement shall not be deemed to constitute renewals or automatic renewals under paragraph (b) of this section. Repurchase agreements may be automatically renewed for any period not exceeding 89 days for each automatic renewal pursuant only to the written agreement between the purchaser and the issuing savings association that the repurchase agreement may be automatically renewed at the option of the issuing savings association in the absence of the oral or written instruction of the purchaser that the repurchase agreement shall not be renewed. Savings associations which provide for the automatic renewal of repurchase agreements shall provide and notify each retail repurchase agreement purchaser of a means to determine the current rates of interest. Repurchase agreements may not be automatically renewed by a savings association which has a regulatory capital deficiency under paragraph (b)(7) of this section.

(7) Eligibility requirements. A savings association which issues or has outstanding repurchase agreements issued under paragraph (b) of this section shall calculate its regulatory capital on a monthly basis in accordance with § 567.2(b) of this subchapter. A savings association that does not have regulatory capital equal to the sum of one percent of all liabilities (i.e., total assets minus regulatory capital) of the savings association, plus an amount equal to 20 percent of the savings association's assets classified under § 563.160 of this part, shall not issue or renew repurchase agreements under paragraph (b) of this section unless it meets the following additional requirements.

(i) Within 45 days after the determination of a regulatory capital deficiency under paragraph (b)(7) of this section, the savings association shall file with the District Director and the Corporate and Securities Division of the Chief Counsel's Office and shall continue to file thereafter on a current basis for as long as the regulatory

capital deficiency shall exist, the following:

(A) Three copies of an opinion of independent legal counsel that the interest of repurchase agreement purchasers in the security or securities underlying the repurchase agreements constitutes a perfected security interest under applicable state law; and

(B) The offering document required under paragraph (b)(5) of this section.

(ii) Within 45 days after the determination of a regulatory capital deficiency under paragraph (b)(7) of this section, and thereafter on a date certain in each succeeding week of the original or renewed term of the repurchase agreement for as long as the regulatory capital deficiency shall exist, the market value of the savings association's security or securities underlying a repurchase agreement shall be at least equal to 105 percent of the principal amount of the issuing savings association's repurchase agreement obligation, plus accrued interest.

(iii) A savings association which has a regulatory capital deficiency under paragraph (b)(7) of this section shall not renew an outstanding repurchase agreement unless it provides the purchaser with the disclosure document required under paragraph (b)(5) of this section and the purchaser thereafter affirmatively elects to renew the repurchase agreement.

#### Subpart D-Investment Limitations

### § 563.90 Appraisals on loans outside lending area.

A savings association investing in a loan outside its normal lending territory, as defined in section 561.32 of this subchapter, shall obtain a signed report of appraisal of any real estate that is relied upon as the primary security for the loan. The report shall be prepared by an appraiser having no interest, direct or indirect, in that security or in any loan on that security and whose compensation is not affected by the approval or disapproval of the loan.

#### § 563.93 Loans to one borrower.

Any loans made by a savings association to one borrower shall be in compliance with both the requirements of section 5(u) of the Act and any more stringent requirements under this section.

(a) Definitions used in this section—
(1) One borrower. (i) The term "one borrower" means:

(A) Any person or entity that is, or upon the making of a loan will become, obligor on a loan. *Provided*, that a guarantor shall not be included within the meaning of "obligor" if, in connection with a loan or other extension of credit, the savings association has determined, in good faith, that the primary obligor has qualified for the loan or extension of credit irrespective of the existence of the guarantor;

(B) Nominees of such obligor;

(C) All persons, trusts, syndicates, partnerships, and corporations of which such obligor is a nominee, a beneficiary, a member, a general partner, a limited partner owning an interest of ten percent or more (based on the value of his contribution), or a record or beneficial stockholder owning ten percent or more of the capital stock;

(D) If such obligor is a trust, syndicate, partnership, or corporation, all trusts, syndicates, partnerships, and corporations of which any beneficiary, member, general partner, limited partner owning an interest of ten percent or more, or record or beneficial stockholder owning ten percent or more of the capital stock, is also a beneficiary, member, general partner, limited partner owning an interest of ten percent or more, or record or beneficial stockholder owning ten percent or more of the capital stock of such obligor;

(E) Any person that, directly or indirectly, owns or controls, or is owned or controlled by, any person that is: An obligor on a loan; a nominee of such an obligor; a general partner or limited partner owning an interest of ten percent or more in a partnership that is an obligor; the beneficiary of a trust that is an obligor; or a member of a syndicate that is an obligor. For purposes of this paragraph (a)(1)(i)(E), the term "control" means the power, directly or indirectly. to direct the management or policies of a person or to vote 10 percent or more of any class of voting securities of a person; and

(F) Two or more persons acquiring a business enterprise of which those persons will in the aggregate own 50 percent or more of the capital stock, or two or more persons obtaining loans for a related purpose where the expected source of repayment for the loans or extensions of credit is the same for each person.

(ii) In the case of a loan that has been assumed by a third party with the consent of the lending savings association, the former debtor and any guarantor shall not be deemed an "obligor."

(2) Outstanding loans. The term "outstanding loans" means:

(i) Any direct or indirect advance of funds (including obligations of makers and endorsers arising from the discounting of commercial paper) to a person on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person, plus interest due and unpaid, less repayments;

(ii) funds a savings association has an obligation to advance under an executed promissory note, unless the loan is subject to a legally binding overline purchase commitment of another person;

(iii) credit extended in the form of finance leases satisfying the criteria set forth in §§ 545.53 and 545.78 of this

chapter

(iv) potential liabilities under standby letters of credit, lines of credit, and guarantee or suretyship obligations, except to the extent that the savings association has recourse to cash or a segregated deposit account of its customer to indemnify it against such liabilities; and

(v) investments in commercial paper and corporate debt obligations. The term does not include a loan or participation interest sold without recourse, a loan secured by a first lien or real estate subject to an annual contributions contract under former section 23 of the United States Housing Act of 1937, as amended, a loan on the security of a savings association's deposit accounts, or a deposit or a loan of unsecured day(s) funds described in § 563.96 of this part. The amount of an outstanding "wraparound" loan is determined by the amount of funds advanced by the savings association, except to the extent that the institution has become liable to pay an obligation secured by a lien on the security property prior to its own.

(3) Outstanding commercial loans.
The term "outstanding commercial

loans" means:

 (i) Outstanding loans for commercial, corporate, business, or agricultural purposes, except to the extent secured

by real property; and

(ii) Loans described in paragraph
(a)(3)(i) of this section made by a
savings association's subsidiary,
attributed pro rata on the basis of the
percentage of the subsidiary's stock
owned by the savings association.

(4) Unimpaired capital and unimpaired surplus. The term "unimpaired capital and unimpaired surplus" means regulatory capital plus specific reserves for loan losses, less appraised equity capital.

(5) Person. The term "person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, non-profit corporation, financial institution, sovereign government or any agency, instrumentality, or political subdivision thereof, or any similar entity

or organization.

(b) Limitations—(1) Aggregate loans. No savings association shall make any loan to one borrower if the sum of (i) the amount of such loan and (ii) the total balances of all outstanding loans owed to such savings association and its service corporation affiliates by such borrower exceeds an amount equal to ten percent of such savings association's withdrawable accounts or an amount equal to such savings association's regulatory capital, whichever amount is less: Provided, That, notwithstanding any other limitation of this sentence, any such loan may be made if the sum of items (b)(1)(i) and (b)(1)(ii) of this section does not exceed \$500,000 and, beginning on January l, 1984, and annually thereafter, such amount adjusted by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index during the previous twelve months as shown in the November-to-November index.

(2) Commercial loans. (i) No savings association may make any commercial loan to one borrower if the sum of such loan and the total balances of outstanding commercial loans to such borrower exceeds the amount a national bank having an identical unimpaired capital and unimpaired surplus could lend such borrower. The general rule stated in section 5200 of the Revised Statutes (12 U.S.C. 84) is that total loans and extensions of credit by a national bank to one borrower are limited to fifteen percent of the bank's unimpaired capital and unimpaired surplus, plus an additional ten percent for loans fully secured by readily marketable collateral. Several exceptions to these limits are set forth in section 5200; and additional limitations on loans to one borrower are found in sections 11(m) and 13 of the Federal Reserve Act (12

U.S.C. 248(m), 372).

(ii) Notwithstanding the limitations imposed by paragraphs (b)(1) and (b)(2) of this section, a savings association may make loans to a service corporation subsidiary in any amount, subject to any limitations on the total amount of investment in service corporations that applies to such savings association.

(iii) The amount of assets transferred (as defined in § 563.132(a)(3) of this part) by a savings association to a finance subsidiary (as defined in § 563.132(a)(4) of this part), subject to the provisions of § 545.82 of this chapter, shall not be subject to the limitations imposed by paragraphs (b)(1) and (b)(2) of this

(3) Rated obligations.
Notwithstanding the limitations set forth

in paragraphs (b)(1) and (b)(2) of this section, a savings association may invest:

(i) Up to one percent of assets or one million dollars, whichever is more, in obligations of one issuer evidenced by:

(A) Commercial paper rated, as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services in the highest category, or

(B) Corporate debt securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value, and that are rated in one of the two highest categories by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security; and

(ii) Up to one half of one percent of assets, or \$500,000, whichever is more, in obligations of one issuer evidenced by:

(A) Commercial paper rated, as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services, in one of the two highest

categories, or

(B) Corporate debt securities that may be sold with reasonable promptness at a price that corresponds reasonably to their fair value, and that are rated in the first, second, or third highest category by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security: Provided, however, That the total amount invested by a savings association in obligations of one issuer pursuant to this paragraph (b)(3) shall not exceed an amount equal to one percent of assets or one million dollars, whichever is more.

(4) Waiver. In accordance with guidelines approved by the Office, the Office of the District Director or the designee of either may waive the application of the limitations in this paragraph (b) to any loan in connection with the resolution or management of a savings association that is of supervisory concern and has deficit or deteriorating regulatory capital.

(5) A savings association's compliance with the limitations set forth in paragraphs (b)(1) and (b)(2) of this section shall be determined as of the date of execution of the promissory note(s) evidencing an obligation, execution of documents evidencing the purchase of loan(s), or such other act as creates a binding obligation by the obligor(s) to repay funds to the lending savings association. The amount of a savings association's "withdrawable accounts" or "regulatory capital" pursuant to paragraph (b)(1) of this

section, or its "unimpaired capital and unimpaired surplus" pursuant to paragraph (b)(2) of this section, shall be calculated as of the savings association's most recent periodic report (monthly or quarterly) required to be filed with the Office prior to the date of granting or purchasing the loan or otherwise creating the obligation to repay funds, unless the savings association knows, or has reason to know, based on transactions or events actually completed, that such level has changed, upward or downward, subsequent to the filing of such report.

(c) Determination by savings association; maintenance of records. If a savings association or service corporation affiliate thereof makes a loan to any one borrower, as defined in paragraph (a) of this section, in an amount which, when added to the total balances of all outstanding loans owed to such savings association and its service corporation affiliates by such borrower, exceeds \$250,000 or 2 percent of the regulatory capital of such savings association, whichever is greater, but in all cases where such outstanding loans exceed \$1,000,000, the records of such savings association or its service corporation affiliate with respect to such loan shall include documentation showing that such loan was made within the limitations of paragraph (b) of this section; for the purpose of such documentation such savings association or service corporation affiliate may require, and may accept in good faith, a certification by the borrower identifying the persons, entities, and interests described in the definition of one borrower in paragraph (a) of this section.

### § 563.94 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

To the extent that it has legal power to do so, a savings association may enter into, perform and carry out any mortgage transaction with the Federal Home Loan Mortgage Corporation specified in section 305 of the Federal Home Loan Mortgage Corporation Act, notwithstanding any provision of this part except the regulatory capital requirements of § 567.2 for recourse liabilities.

### § 563.95 investment in state housing corporations.

(a) Any savings association to the extent it has legal authority to do so, may make investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation (as defined in § 571.8); Provided, That such obligations or loans are secured directly, or indirectly through a

fiduciary, by a first lien on improved real estate which is insured under the National Housing Act, as amended, and that in the event of default, the holder of such obligations or loans has the right directly, or indirectly through a fiduciary, to subject to the satisfaction of such obligations or loans the real estate described in the first lien, or the insurance proceeds. The aggregate outstanding direct investment and investment in loans and loan commitments under this paragraph (a) shall not exceed 30 percent of the savings association's assets at the time of investment, and shall not exceed 10 percent of such assets for investments in state housing corporations located outside the association's home State.

(b) Any savings association whose general reserves surplus and undivided profits aggregate more than 5 percent of its withdrawable accounts may, to the extent it has legal authority to do so, invest in obligations (including loans) of or issued by any state housing corporation incorporated in the State in which such savings association has its principal office; provided (except with respect to loans), that:

(1) The obligations are rated in one of the four highest grades as shown by the most recently published rating made of such obligations by a nationally recognized rating service; or

(2) the obligations, if not rated, are approved by the Office.

The aggregate outstanding direct investment in obligations under this paragraph (b) shall not exceed the amount of the savings association's general reserves, surplus and undivided profits, and no more than 25 percent of the aggregate outstanding investment may be invested in obligations issued by any one state housing corporation.

(c) Any savings association whose general reserves, surplus and undivided profits aggregate more than 5 percent of its withdrawable accounts, to the extent it has legal authority to do so, may make direct equity investments in equity securities of any state housing corporation incorporated in the State in which the saving association's principal office is located.

(d) Each state housing corporation in which a savings association invests under the authority of paragraphs (b) and (c) of this section shall agree, before accepting any such investment (including any loan or loan commitment), to make available at any time to the Office such information as the Office may consider to be necessary to ensure that investments are properly made under this section.

§ 563.96 Limitation on investment in accounts of commercial banks and thrift institutions and in debt securities hedged with forward commitments.

A savings association's investments in savings accounts of a commercial bank or savings association (including loans of unsecured day(s) funds, i.e., Federal funds or similar unsecured loans), and debt securities hedged with a firm forward commitment (including a commitment represented by a repurchase agreement) to purchase the debt securities issued by any single individual, partnership, or corporate or mutual entity of any sort, shall not exceed, with respect to any single individual, partnership, or corporate or mutual entity, the greater of one hundred thousand dollars, or the lesser of if applicable, one-half of one percent of the deposits of the financial institution from which the investment is obtained, or the greater of the investing savings association's regulatory capital or one percent of the investing savings association's assets.

### § 563.97 Loans in excess of 90 percent of value.

(a) A savings association authorized to make loans in excess of 90 percent of value on the security of real estate comprising single-family dwellings or dwelling units for four or fewer families may do so only if such loans comply with § 545.38(a) or § 545.32(d)(2) of this chapter.

(b) This section does not apply to loans to facilitate the sale of real estate owned as a result of foreclosure, or acquired by deed in lieu of foreclosure, or where a contract purchaser has defaulted and the contract canceled, nor to investments in Farmers Home Administration Rural Housing Program guaranteed loans complying with § 545.38 of this chapter.

§ 563.98 Regulation of equity risk investment in equity securities, real estate, service corporations, operating subsidiaries, certain land loans, and nonresidential construction loans.

(a) Scope. A savings association, to the extent it has independent legal authority to do so, may make investments in equity securities, real estate, service corporations, operating subsidiaries, and certain land loans and nonresidential construction loans (collectively, "equity risk investments") only in compliance with the provisions of this section.

(b) Definitions. When used in this section:

(1) Aggregate equity risk investment means the sum of investments in equity securities, real estate, service corporations, and operating subsidiaries: Provided, That: Upon the sale, liquidation, retirement, or other disposition of any such investment:

(i) The amount of aggregate equity risk investment shall be reduced to the extent that the original investment is

recovered;

(ii) Any gain recovered shall not reduce aggregate equity risk investment; and

(iii) Any loss realized shall be deemed to be an outstanding equity risk investment except to the extent that it can be netted against realized gains on

other equity risk investments.

(2) Equity security means any stock, certificate of interest of participation in any profit-sharing agreement, collateraltrust certificate, preorganization certificate or subscription, transferable share, investment contract, or votingtrust certificate; or, in general, any interest or instrument commonly known as an equity security; or loans having profit-sharing features which would be reclassified as equity investments under generally accepted accounting principles for the Office's accounting regulations if applicable); or any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; or any security carrying any warrant or right to subscribe to or purchase such a security; or any warrant or right to subscribe to or purchase such a security; or any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing; but does not mean

(i) Stock issued by a Federal Home Loan Bank or a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of

(ii) Securities issued by any open-end management investment company that is registered under the Investment Company Act of 1940 the portfolio of which is subject to the restrictions set forth at section 5(c)(1)(Q) of the Home Owners' Loan Act;

(iii) Securities issued by a service corporation, an operating subsidiary, or

a finance subsidiary;

(iv) Securities acquired through foreclosure proceedings or through settlement in lieu of foreclosure; and

(v) Securities, or loans subject to reclassification under generally accepted accounting principles (or the Office's accounting regulations if applicable), which represent an "investment in real estate" as defined in paragraph (b) of this section.

(3) Finance subsidiary means a corporation as defined in § 563.132(a)(4)

of this part.

(4) Savings association means a savings association as defined in § 561.43 of this subchapter, including institutions subject to § 543.11-1 of this chapter, but excluding BIF-insured Federal savings associations.

(5) Investment in equity securities means an amount equal to the historical book value of equity securities held as of December 10, 1984, or an amount equal to the purchase price of equity securities acquired after such date.

(6) Investment in real estate means an

amount equal to:

(i) The purchase price of all equity interests in real property, as determined in accordance with generally accepted accounting principles (or the Office's accounting regulations if applicable), exclusive of equity interests in (A) real property to be used primarily by the savings association for offices or other related facilities and (B) real property acquired in foreclosure, by deed in lieu of foreclosure, or on which a contract purchaser has defaulted and the contract has been cancelled;

(ii) Loans or advances to and guarantees issued on behalf of partnerships or joint ventures in which a savings association holds an interest which would be classified as an equity interest in real property under generally accepted accounting principles (or the Office,s accounting regulations if

applicable);

(iii) Land loans (as that term is defined in § 561.26 of this subchapter) and nonresidential construction loans (as that term is defined in § 561.30 of this subchapter) with loan-to-value ratios (as defined in paragraph (b)(9) of this section) greater than 80 percent, exclusive of loans for real property to be used primarily by the savings association for offices or other related facilities; and

(iv) Interest capitalized in accordance with generally accepted accounting

principles.

(7) Investment in service corporation and "investment in operating subsidiary" mean the amount of all equity and debt investments made by a savings association in such corporations (exclusive of any earnings or losses recorded using the equity method of accounting), including, but not limited to, investments in securities issued by such corporations, and the underwriting of extensions of credit to, or the guaranteeing of the debt of, such corporations: Provided, That such investment shall be reduced by the repayment of any advance or loan, the expiration or cancellation of any guarantee of indebtedness, or the redemption or sale of any security of

such corporations held by a savings association.

(8) Issuer means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the terms "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) Loan-to-value ratio means the ratio of the loan to the "market value" of the collateral; for purposes of this section, market value means the most probable price in terms of money that a property would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus or special or creative financing or sales concessions granted by anyone associated with the sale, as set forth in an appraisal issued in conformance with the requirements of §§ 563.170 and 563.172 of this part.

(10) Operating subsidiary means a corporation, the majority of the capital stock of which is owned by a savings association, which engages exclusively in activities which are part of or incidental to the business of the savings association, as authorized by applicable

law.

(11) Service corporation means a corporation as defined in § 561.45 of this subchapter or as authorized by state law: Provided, That the entire capital stock of such corporation is available for purchase only by savings associations, as defined in § 561.43 of

this subchapter.

(12) Tangible capital means the amount of equity capital as determined in accordance with generally accepted accounting principles minus goodwill and other intangible assets plus qualifying subordinated debt as defined in § 567.1(c) of this subchapter and qualifying nonpermanent preferred stock as defined in § 567.1(d) of this subchapter.

(c) Thresholds for aggregate equity risk investment-(1) Consolidation of equity risk investments. For purposes of determining compliance with the requirements of this section, a savings association may consolidate the equity risk investments of any or all of its service corporations and operating subsidiaries with its own equity risk investments and may exclude its investments in such consolidated corporations from the calculation of its aggregate equity risk investment: Provided, That all such consolidated equity risk investments shall be deemed to be those of the savings association for purposes of the diversification requirement of paragraph (e) of this section.

(2) Thresholds. Except as provided in paragraphs (f) and (g) of this section, no savings association shall make an equity risk investment if immediately thereafter its aggregate equity risk investments would exceed the

applicable threshold:

(i) With respect to a savings association that is not subject to the limitations of paragraph (c)(2)(ii) or (c)(2)(iii) of this section and has tangible capital equal to or greater than 6 percent of "total liabilities" (as defined in § 567.2(b)(1)(i) of this subchapter), the applicable threshold is three times tangible capital, calculated as of the end of the immediate preceding calendar

(ii) With respect to a savings association that meets its minimum capital requirements set forth in § 567.2 of this subchapter and has tangible capital less than 6 percent of "total liabilities" (as defined in § 567.2(b)(1)(i) of this subchapter), the applicable threshold is the greater of (A) 3 percent of the savings association's assets or (B) two and one-half times the association's tangible capital calculated as of the end of the immediately preceding calendar

(iii) A savings association that fails to satisfy its regulatory capital requirement shall not make equity risk investments except as approved by the District

(3) Notification. A savings association that undertakes aggregate equity risk investments, pursuant to the threshold authorization set out at paragraph (c)(2)(i) of this section, that would exceed 20 percent of assets shall notify its District Director of such investment. Such notification shall be given to the District Director concurrent with making the such equity risk investment and shall include the amount(s) of the equity risk investment and a brief description of the type(s) of equity risk investment.

(d) Equity-security investments—(1) Permissible investments. The equity securities in which a savings association

may invest shall be limited to:

(i) Common or preferred stock listed on the New York Stock Exchange or American Stock Exchange or quoted on the National Association of Securities Dealers Automated Quotation System, or such other national securities exchange or quotation service as the Corporation may determine; or any security immediately convertible at the option of the holder without payment of substantial additional consideration into such stock, or any security carrying any warrant or right to subscribe to or purchase such stock, or any warrant or right to subscribe to or purchase such stock, provided that any such security. warrant, or right is also listed or quoted on such exchange or quotation service; or any certificate of interest or participation in, temporary or interim certificate for, or receipt for such

(ii) Securities issued by any diversified open-end management investment company that is registered with the Securities and Exchange Commission under the Investment

Company Act of 1940;

(iii) Stock of any small business investment company ("SBIC") formed pursuant to section 301(d) of the Small Business Investment Act, provided that the savings association's outstanding aggregate investment in such SBICs does not exceed 1 percent of the savings association's assets;

(iv) Equity securities issued by any United States government-sponsored corporation, including the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Student Loan Marketing Association, and the Federal Agricultural Mortgage

Corporation; and

(v) Equity securities issued by a partnership or joint venture engaged exclusively in activities which are part of or are incidental to the business of

the savings association.

(2) Other investments. The Senior Deputy Director for Supervision (Operations) is authorized to determine whether insured savings associations may be permitted to invest in stocks listed on exchanges or quoted on national quotation services other than those set forth in paragraph (d)(1)(i) of this section.

(3) Savings association stock. No savings association shall at any time, directly or indirectly, or through or in concert with one or more other persons, or through one or more subsidiaries, own, control, or hold with power to vote

capital stock issued by

i) Another savings association or (ii) Any non-diversified savings and loan holding company, unless the amount of such stock so owned,

controlled, or held by the investing association is such that the investing association is deemed to be a savings and loan holding company within the meaning of section 10 of the HOLA. The term "nondiversified savings and loan holding company" means a "savings and loan holding company" within the meaning of section 10 of the HOLA that is not a "diversified savings and loan holding company" within the meaning of that section.

(e) Diversification—(1) Equity securities. Except as provided in paragraphs (f) and (g) of this section, no savings association shall at any time own, control, or hold with power to vote for its own account more than 25 percent of any one class of the outstanding equity securities of any one issuer nor an amount of all classes of the outstanding equity and debt securities of such issuer which, when aggregated with loans to such issuer, are greater than the association's 'regulatory capital" (as defined in § 567.1 of this subchapter): Provided, That the limitations of this paragraph (e)(1) shall not apply if the issuer is a partnership or joint venture engaged exclusively in activities which are part of or incidental to the business of the savings association.

(2) Real estate. Except as provided in paragraphs (f) and (g) of this section, no savings association shall at any time invest in any one real-estate project (including, but not limited to, acquisition, development, and carrying costs and assumption of any debt or liability in connection with such project) an aggregate amount greater in value than the amount permitted under the aggregate loans-to-one borrower limitation, as set forth in § 563.93(b)(1)

of this part.

(f) Saving clause. (1) A savings association whose aggregate or specific types of actual or prospective equity risk investments on December 10, 1984, would not conform to the requirements of this section shall not be prohibited solely for that reason from maintaining such investments, making investments to which it was legally committed on that date, or completing projects pursuant to definitive plans in existence on that date; nor shall a savings association be required to divest any investment solely because of a subsequent change in its assets or its regulatory capital: Provided, That additional equity risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to District Directors to prohibit equity risk

investments or to require the reduction of aggregate equity risk investment or the divestiture of specific equity risk investments.

(2) A savings association whose aggregate actual or prospective equity risk investments on February 27, 1987 were in compliance with its applicable threshold on that date, including compliance as a result of applying the savings clause of paragraph (f)(1) of this section or of securing District Director approval of otherwise nonconforming levels of investment, but would not conform to the requirements of paragraph (c)(2) of this section (and are not "grandfathered" under paragraph (f)(1) of this section shall not be prohibited solely for that reason from maintaining such investments, or making investments to which it was legally committed on that date; nor shall a savings association be required to divest any investment solely because of a subsequent change in its assets or its regulatory capital: Provided, That additional equity risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to District Directors to prohibit equity risk investments or to require the reduction of aggregate equity risk investment or the divestiture of specific equity risk investments.

(3) A savings association whose aggregate actual or prospective equity risk investments on February 27, 1987 would not conform to the requirements of paragraph (e)(2) of this section (and are not "grandfathered" under paragraph (f) (1) or (2) of this section) shall not be prohibited solely for that reason from maintaining such investments or making investments to which it was legally committed on that date; nor shall an association be required to divest any investments solely because of a subsequent change in its assets or its regulatory capital: Provided. That additional equity risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to District Directors to prohibit equity risk investments or to require the reduction of aggregate equity risk investment or the divestiture of specific equity risk investments.

(4) A savings association whose aggregate actual or prospective equityrisk investments on December 14, 1988 were in compliance with its applicable thresholds on that date, including compliance as a result of applying the savings clauses of paragraphs (f)(1)

through (3) of this section or of securing District Director approval of otherwise nonconforming levels of investment, but would exceed those thresholds because of the inclusion of investments in stock issued by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, shall not be prohibited solely for that reason from maintaining its full investment in such stock made as of December 14. 1988; nor shall a savings association be required to divest any investments solely because of a subsequent change in its assets or its regulatory capital; nor shall a savings association be in violation of paragraph (e)(1) of this section solely by maintaining its full investment in such stock made as of December 14, 1988, considering that for the purposes of making that calculation with respect to the foregoing issuers only, debt obligations shall not be considered: Provided, That additional equity-risk investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to District Directors to prohibit equity-risk investments or to require the reduction of aggregate equity-risk investment or the divestiture of specific equity-risk investments.

(g) Exceptions. (1) Except as provided in paragraph (g)(6) of this section, a savings association seeking to make equity risk investments in an amount, at a threshold level, or of a type other than as generally permitted by this section shall file an application with its District Director and, if it is state-chartered, shall send a copy of the application to its state supervisor. Within 10 days of the filing of such an application or any additional information, the District Director shall notify the applicant in writing either that all information required under paragraph (g)(2) of this section has been filed or that additional specified information must be filed. If the District Director does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(2) The application shall set forth the following:

 (i) The total amount, in dollars and as a percentage of assets and regulatory capital, of equity risk investments that the applicant seeks to make;

(ii) An identification of the applicant's investment threshold as determined in accordance with paragraph (c) of this section, including, as of the end of the preceding calendar quarter, the applicant's

(A) total assets;

(B) regulatory net worth;

(C) minimum regulatory capital requirement under § 567.2(b) of this subchapter, and

(D) special-purpose regulatory capital requirement set forth in paragraph(c)(2)(ii) of this section;

(iii) A description and quantification, as a dollar amount and as a percentage of assets and regulatory capital, of the applicant's outstanding equity risk investments:

(iv) A business plan which includes a proposal for appropriate diversification of the equity risk investments of the applicant and its service corporations and operating subsidiaries in equity securities and real estate, and which describes the proposed specific investment or general plan for investment pursuant to an augmented threshold level and its anticipated financial impact on the applicant; and

(v) Such other information as may be requested in writing by the District Director, *Provided, however,* That the District Director may make only one such request for additional information for each application submitted.

(3)(i) The District Director shall approve or disapprove an application in writing, giving due consideration to any written views and recommendations submitted by the appropriate state supervisor. If the views of the District Director and the state supervisor differ after consultation, the District Director shall refer the application to the Office for decision.

(ii) The District Director shall approve an application unless he or she makes any of the following findings:

(A) The overall policies, condition, and operation of the applicant afford a basis for supervisory objection; the District Director will specifically but not exclusively review:

(1) The trends in performance including:

(i) Tangible capital;

(ii) Earnings;

(iii) The level of assets classified under § 563.160 of this part;

(iv) The level of capital relative to a savings association's fully phased-in requirement; and

(v) The savings association's market value:

(2) Controls, including:

(i) The specific goals and objectives of the savings association relating to equity risk investments;

(ii) Whether the savings association's plans are consistent with management's expertise;

(iii) Whether the savings association has identified and evaluated the risks

involved in the activity:

(iv) Whether the savings association has an ability to identify and resolve on a timely basis problems which might

(v) Whether adequate records are

being maintained; and

(vi) Whether procedures are in place to monitor the performance of the

(B) The proposed investment or level of investment is likely to increase either the applicant's risk of default or the financial exposure of the SAIF; specifically that:

(1) The goals and objectives of the savings association expose it to a high

probability of loss; or

(2) The risks are improperly reflected in the savings association's business plan, cash flow analysis, and projected

profit and loss statement.

(C) The equity risk investments of the applicant and its service corporations and operating subsidiaries in equity securities and real estate are not appropriately diversified. Equity risk investments shall be deemed to be "appropriately diversified" if the consolidated equity risk investments of the applicant and its service corporations and operating subsidiaries in equity securities and real estate, when deemed to be those of the applicant, meet the requirements of paragraph (e) of this section; and if

(1) The activities are geographically diversified in a manner consistent with the overall business plan of the savings

association;

(2) The types of projects are diversified; and

(3) The savings association is engaging in activities with a wide range

of other parties.

(D) The applicant's policies are inconsistent with economical home financing, as evidenced by its failure to comply with the definition of a 'qualified savings association" as set forth in § 584.2-2(b) of this chapter.

(iii) In the event that the District Director makes any of the findings in paragraph (g)(3)(ii) of this section, he or she may nevertheless approve the application subject to written

(iv) The Senior Deputy Director for Supervision (Policy) shall prepare, and disseminate to the District Directors, standards for the District Directors' use in determining whether to approve applications for equity risk investments that are one-to-four family housing projects and government-insured multifamily housing projects. The Senior Deputy Director for Supervision (Policy) may revise these standards from time to

(4) An adverse determination made by the District Director may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Office. The savings association shall file its petition with the Secretary to the Office, and shall send a copy to the District Director and, if the association is state-chartered, to the state supervisor.

(5) The Office shall approve or disapprove an application referred by a District Director pursuant to paragraph (g)(3)(i) of this section and grant or deny a petition for reconsideration filed pursuant to paragraph (g)(4) of this section in writing within 30 days of receipt of such application or petition. If the Office does not disapprove or deny such application or petition within such time, such application shall be deemed to be approved or such petition granted.

(6) A savings association seeking to make equity risk investments otherwise requiring prior review and approval by its District Director or the Office under § 546.2, § 552.13 or § 563.22 or Part 574 of this chapter shall not be required to file an application under this paragraph (g).

(h) Expiration date. This section shall expire on July 13, 1990.

§ 563.99 Fixed-rate and adjustable-rate mortgage loan disclosures, adjustment notices, and Interest rate caps.

- (a) Definitions. For purposes of this section:
- (1) Adjustable-rate mortgage loan means a mortgage loan, secured by property occupied or to be occupied by the borrower, providing for adjustments to the interest rate which cause a change in balance, term to maturity, or payment levels other than those established by a fixed, predetermined schedule at the time of contracting for the loan.
- (2) Fixed-rate mortgage loan means a loan, secured by property occupied or to be occupied by the borrower, on which the rate, the term, and the amount of the payments are fixed at the time of execution of the original loan documents. Fixed-rate mortgage loans may or may not be fully amortizing and include graduated payment loans on which the schedule of payment adjustments is fixed at the time of executing the original loan documents.

(3) Applicant means a natural person (or persons) making a loan application.

(4) Home means real estate as defined by § 541.14 of this chapter, manufactured housing, combinations of homes and business property, and farm residences or combinations of farm

residences and commercial farm real

(b) Initial disclosures for adjustablerate mortgage loans. Savings associations offering adjustable-rate home loans, except open-end loans, with a term of more than one (1) year and secured by property occupied or to be occupied by the borrower, shall provide two types of written disclosure to prospective borrowers when an application form is provided or before the payment of a non-refundable fee, whichever is earlier:

(1) The booklet titled Consumer Handbook on Adjustable Rate Mortgages published by the Office and the Federal Reserve Board, or a suitable

substitute.

(2) A loan program disclosure for each adjustable-rate home loan program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided: 2

(i) The fact that the interest rate, payment, or term of the loan can change.

(ii) The index or formula used in making adjustments, and a source of information about the index or formula.

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the use of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount.

(vi) The frequency of interest rate and

payment changes.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate

carryover.

(viii) An historical example, based on a \$10,000 loan amount, illustrating how payments and the loan balance would have been affected by interest rate changes implemented according to the terms of the loan program. The example shall be based upon index values beginning in 1977 and be updated annually until a 15-year history is shown. Thereafter, the example shall reflect the most recent 15 years of index values. The example shall reflect all significant loan program terms, such as negative amortization, interest rate

<sup>\*</sup> A sample disclosure form may be found in the Federal Register issue of May 23, 1988 (53 FR 18262) or may be obtained from the Office.

carryover, interest rate discounts, and interest rate and payment limitations, that would have been affected by the index movement during the period.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on the most recent payment shown in the historical example.

(x) The maximum interest rate and payment for a \$10,000 loan originated at the most recent interest rate shown in the historical example assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan.

(xi) The fact that the loan program

contains a demand feature.

(xii) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xiii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

- (c) Adjustment notices. An adjustment to the interest rate with or without a corresponding adjustment to the payment in an adjustable-rate transaction subject to this section is an event requiring new disclosures to the consumer. At least once each year during which an interest rate adjustment is implemented without an accompanying payment change, and at least 25, but no more than 120, calendar days before a payment at a new level is due, the following written disclosures, as applicable, must be delivered or placed in the mail:
- (1) The current and prior interest
- (2) The index values upon which the current and prior interest rates are based.
- (3) The extent to which the creditor has foregone any increase in the interest
- (4) The contractual effects of the adjustment, including the payment due after the adjustment is made, and a statement of the loan balance.

(5) The payment, if different from that referred to in paragraph (c)(4) of this section, that would be required to amortize fully the loan at the new interest rate over the remainder of the loan term.

(d) Fixed-rate and adjustable-rate mortgage loan disclosures. Not later than three business days following receipt of a written application for a fixed-rate or adjustable-rate mortgage loan, savings associations shall disclose in writing to the applicant the information specified in this paragraph (d). Disclosures shall be provided for all such loans whether originated by the lender or purchased from an affiliate (as

defined in § 583.2 of this chapter) or purchased from an unaffiliated entity as part of a business arrangement or agreement to purchase loans not yet originated. Disclosures shall be delivered or placed in the mail not later than three business days following receipt of a consumer's written application when the application reaches the creditor through an intermediary agent or broker. Loans purchased from an unaffiliated entity in the usual course of business, and previously originated by the entity without guarantees, agreements or understandings that they would be purchased by the savings association, may be purchased notwithstanding these disclosures requirements, provided that such loans comply with the disclosure requirements of other federal laws and regulations to which they may be subject. The disclosures shall be in one or more documents other than the loan documents and shall be in plain language. The purpose of these disclosure requirements is to provide a full understanding of the operations and consequences of the loan for which the borrower is applying. If savings associations elect to disclose the information in paragraphs (d)(1) through (d)(4) of this section as part of their advance disclosures under paragraph (c) of this section, disclosed information need not be repeated. Disclosures do not constitute a commitment on the part of a savings association to make a loan to the applicant. At a minimum, the following shall be disclosed:

(1) If the loan contract contains a dueon-sale clause, what rights the lender

has under the clause.

(2) If the loan contract authorizes the imposition of a late charge or a prepayment penalty the amount of the charge or penalty or the manner in which it is to be determined. If the method of calculating the charge or penalty may vary over the term of the loan, the lender shall indicate the approximate minimum and maximum amounts that may be imposed for a loan of the same type and with an initial balance comparable to that of the

borrower.

(3) If the loan contract provides for escrow payments, a statement explaining the purpose of requiring escrow payments, how the amount of escrow payment is established, how the borrower will be notified of any deficiencies in the borrower's escrow account, how such deficiencies will be corrected, whether the borrower will have the option of correcting the deficiency with either pro-rated monthly payments or a lump-sum payment, how any surplus will be returned to the

borrower, and the rights of the lender if the borrower fails to make the escrow payments.

- (4) In the case of non- or partiallyamortized loans (including a loan giving the lender the right to call the loan due and payable after a period of time or upon the occurrence of an event external to the loan), a statement of what information will be contained in the notice of maturity, how far in advance notice of maturity will be provided, whether the savings association has unconditionally obligated itself to refinance the loan, and whether there will be a large payment due at maturity or upon call of the loan.
- (e) Maximum interest rate caps. All savings associations making adjustablerate loans, originated on or after December 8, 1987, whether open-end or closed-end, shall comply with Regulation Z (12 CFR 226.30) by specifying in their credit contracts the maximum interest rate that may be imposed during the term of the obligation.

(f) Exception. The disclosures in paragraph (b) of this section are not required in connection with the extension of consumer credit as defined in § 561.12 of this subchapter even if it is secured by a borrower-occupied home as long as the home is not the primary security for the loan.

### Subpart E-Limits Tied to Capital Levels

### § 563.131 Liability growth.

- (a)(1) No savings association, unless exempted by paragraph (b) of this section, shall increase its total liabilities within any 2-quarter period at a rate greater than 12.50 percent without prior approval of the savings association's District Director.
- (2)(i) The rate of increase in liability growth under paragraph (a)(1) of this section shall be computed by subtracting a savings association's total liabilities as of the beginning of a 2consecutive-quarter period from its total liabilities as of the end of the 2consecutive-quarter period and by dividing this amount by the savings association's total liabilities as of the beginning of the 2-consecutive-quarter
- (ii) The method of computation set forth in paragraph (a)(2)(i) of this section shall be used by a savings association commencing operations as a savings association or initially becoming subject to this regulation, although such a savings association's first computation under this section shall be made at the

end of the second quarter during which the savings association operates or is subject to this regulation for all or a portion of the quarter. If a savings association commences operation or initially becomes subject to this regulation within a quarter, the savings association shall be permitted to grow up to 6.25 percent during that quarter.

(iii) For purposes of computing a savings association's growth pursuant to paragraphs (a)(1) and (a)(2) of this section, a savings association's total liabilities as of the beginning of a 2-

consecutive-quarter period.

(A) Shall include any increases in liabilities during the 2-quarter period resulting from the acquisition of substantially less than all of the liabilities of a savings association after which the selling savings association continues in operation as a separate entity (including, but not limited to, branch acquisitions), and

(B) Shall be equal to the total liabilities of merged or continuing savings associations as of the beginning of the 2-quarter period in the case of a merger, consolidation, or purchase of assets and assumption of liabilities that occurs during the 2-consecutive-quarter

period

(3) Notwithstanding the provisions of paragraph (a) (1) or (2) of this section, a savings association that increases its liabilities through merger, consolidation, or purchase of assets and assumption of liabilities, for which prior review and approval under § 563.22 of this part is required, shall not be required to file an application under paragraph (c) of this section unless such savings association otherwise increases its liabilities by an amount in excess of 12.50 percent within any 2-consecutive quarter period.

(b) Any savings association is exempted from the preapproval requirement of paragraphs (a) and (c) of this section if it has regulatory capital equal to the higher of its fully phased-in capital requirement (6 percent of total liabilities plus contingency component minus maturity matching credit) or 6 percent of total liabilities. Such a savings association must provide notice to its District Director of its intention to grow in excess of the standard set by paragraph (a) of this section.

(c) To obtain prior written approval from its District Director a savings association shall submit a written growth plan. A growth plan shall cover a period of time not to exceed 1 year and shall include the following

information:

(1) The savings association's regulatory capital as of the end of the preceding calendar quarter and its estimated regulatory capital as of the end of the period covered by the growth

(2) The amount of liabilities the savings association expects to obtain;

(3) A listing of the proposed sources of and the methods by which the liabilities will be obtained;

(4) The costs, rates, and maturities of liabilities to be obtained; and

(5) The planned uses of any liabilities

(d) No savings association shall alter an approved written growth plan or materially diverge from such a plan without the prior written approval of its

District Director.

(e) Within 10 days after the filing of a growth plan or any additional information, the District Director shall notify the applicant in writing either that all information required under paragraph (c) of this section has been filed or that additional specified information must be filed. Unless the District Director takes objection to or conditionally approves the plan within 30 days of the date of written notice that all required information has been filed, the plan shall be deemed to be approved. Based on a savings association's growth plan, the District Director may require the savings association to maintain not more than 4 percent additional regulatory capital over that required by § 567.2(b)(1) of this subchapter on all or a portion of the savings association's growth over the 12.50 percent rate computed in accordance with paragraph (a) of this section. In determining whether to take objection to a growth plan, to approve a growth plan conditionally, or to require additional regulatory capital, the District Director shall consider the following

 The effect of the plan upon the savings association's regulatory capital;

(2) The risk of the corresponding investments, the likelihood of obtaining the projected return, the level of diversification, and the ability of the savings association to underwrite the incremental volume of investments;

(3) The relative maturities of the liabilities and corresponding investments;

(4) The extent to which the liabilities are derived from or through a single

source;

(5) The extent to which the interest to be paid on the liabilities conforms with generally prevailing rates for similar liabilities;

(6) The financial strength of the savings association, including the level of its regulatory capital, which shall not be less than that required by § 567.2 of this subchapter;

(7) The stability of the savings association's earnings over the 6 preceding calendar quarters;

(8) The extent to which the savings association's overall policies are consistent with economical home financing, as evidenced by whether the savings association would comply with the definition of "qualified savings association" set forth in § 584.2–2(b) of this chapter; and

(9) Whether the overall policies, conditions, and operation of the applicant afford a basis for supervisory

objection.

(f) Total liabilities for purposes of this section shall not include an amount of securities issued through subsidiaries (as defined by § 563.132(a)(1) of this part) that does not cause the subsidiary's level of outstanding securities to exceed its level of securities grandfathered pursuant to § 563.132(b) of this part. Such securities shall be included in total liabilities as defined in § 567.2(b)(1)(i) of this subchapter for all other purposes.

### § 563.132 Securities issued through subsidiaries.

(a) Definitions. As used in this section:

(1) Amount of securities issued through a subsidiary means the net proceeds from the issuance of securities (or the pro-rata portion of the net proceeds from securities issued through a jointly owned subsidiary), other than capital stock issued by a subsidiary to its parent savings association, after December 31, 1985, by:

(i) A finance subsidiary as defined in paragraph (a)(4) of this section; or

(ii) An operating subsidiary (as defined in § 563.98(b)(9) of this part), a service corporation (as defined in § 561.45 of this subchapter), or any other subsidiary of a state-chartered savings association not organized in compliance with § 545.82 of this chapter, if any proceeds of such securities are remitted to a parent savings association (unless such a subsidiary demonstrates to its parent savings association's District Director that the purpose for such an issuance was totally for the subsidiary's reasonable corporate needs based on reasonable written projections of its financing requirements).

(2) Assets collateralizing or collateralizing assets means any assets of a subsidiary (including guarantees of its securities issuance by its parent savings association) securing, pledged to, or committed to an amount of securities issued through a subsidiary.

(3) Assets transferred means assets of or liabilities issued by a savings

association (including guarantees by a savings association of its subsidiary's securities issuances) that are transferred or made available by a savings association (i) to a finance subsidiary as defined in paragraph (a)(4) of this section or (ii) to collateralize an amount of securities issued through a subsidiary as defined in paragraph (a)(1) of this section.

(4) Finance subsidiary means (i) a Federal savings association's subsidiary as defined in § 545.82(a)(3) of this chapter, or (ii) a state-chartered savings association's subsidiary in compliance with the provisions of § 545.82 of this chapter. Investment by a savings association in a finance subsidiary as defined in this paragraph (a)(4) is not subject to the provisions of the equity risk investment regulation set forth in § 563.98 of this part.

(5) Savings association means a savings association as defined in § 561.43 of this subchapter, including savings associations subject to § 543.11-1 of this chapter, but excluding BIF-insured Federal savings associations.

(6) Securities means any securities as defined in § 561.44 of this subchapter.

(b) Issuances affected. (1) The amount of securities issued through a subsidiary does not include proceeds from securities:

(i) Offered or sold by a subsidiary, either directly or through a third party intermediary, if such offer or sale terminated no later than March 3, 1986, and if the offer or sale was preceded by (A) a registration statement filed with the Securities and Exchange Commission on or before December 31, 1985, or (B) for securities exempt from such registration requirements, an offering document relating to the securities offered filed with an appropriate regulatory agency or lawfully provided to prospective purchasers on or before December 31, 1985.

(ii) Issued in connection with a borrowing, when a note evidencing such borrowing was executed on or before December 31, 1985.

(2) The amount of securities issued through a subsidiary includes the renewal, extension, or rollover of securities after December 31, 1985, unless such a transaction was undertaken pursuant to a binding written contract with a term of one year or less which was executed and became effective on or before December 31, 1985.

(c) Inclusion of securities issuances through a subsidiary in computation of a savings association's regulatory capital requirement. In calculating total liabilities under § 567.2(g)(1) of this

subchapter, the amount of securities issued through a subsidiary shall be included in the total liabilities (as defined in § 567.2(g)(1) of this subchapter of a parent savings association for purposes of computing such savings association's regulatory capital requirement and its compliance with § 563.131 of this part: Provided, that such amount shall not include an amount equal to the net proceeds from the issuance of securities:

(1) Collateralized by assets that have substantially the same duration as the securities issued and have a relationship to the issued securities such that the duration match will be maintained within the Office's prescribed parameters throughout the life of the securities without active management and, if issued after August 15, 1986, collateralized by assets the market value of which is less than 110 percent of the gross proceeds of the securities issuance; or

(2) Remitted in exchange for a liability issued by a parent savings association which is otherwise included in the parent savings association's total liabilities pursuant to § 567.2(g)(1) of this subchantor.

subchapter. (d) Certification of duration analysis. Within 10 days after an amount of securities is issued through a subsidiary, such subsidiary shall furnish its parent savings association's District Director with a written certification of the accuracy and validity of the duration measurement required by paragraph (c)(1) of this section. The subsidiary shall also send a copy of the certification to the Senior Deputy Director for Supervision (Operations). Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Such certification shall specify:

(1) The duration calculation (in complete or summarized form); (2) The underlying financial

assumptions, including those related to interest rates, maturity, and prepayment; (3) Any different calculations or assumptions being relied upon for

by a national rating agency; and
(4) The certification of accuracy and
validity by the subsidiary and by any
organization performing the duration
analysis on behalf of the subsidiary.

purposes of the rating of the securities

(e) Notification to the District
Director. (1) Prior to the establishment
of any finance subsidiary, the transfer of
any additional assets to an existing
finance subsidiary, or the issuance of
securities through a subsidiary as
described in paragraph (a)(1)(ii) of this
section, the board of directors of the
parent savings association, or a duly
authorized executive committee thereof,

shall submit written notification to the savings association's District Director specifying:

(i) The name of the subsidiary conducting the issuance and the nature of the subsidiary (e.g., service corporation organized pursuant to state law primarily for equity risk investment);

(ii) The jurisdiction of incorporation of the subsidiary;

(iii) The amount of assets of the parent savings association to be transferred (including the terms of any guarantee to be issued by the savings association or any affiliate of the savings association); the current book value of all such assets of the subsidiary; and the percentage that the amount of assets to be transferred represents of the current book value of parent savings association's total assets on an unconsolidated basis; and

(iv) When known and to the extent permitted by the Securities Act of 1933:

(A) A description of the securities to be issued by the subsidiary, including the term thereof;

(B) The aggregate amount of the securities issuance; the anticipated amount of gross proceeds of the securities issuance; and the current market value of assets collateralizing the securities issuance;

(C) The anticipated interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(D) The minimum denomination of the subsidiary's securities; and

(E) Where the subsidiary intends to market the securities.

(2) Within 10 days after the issuance of any securities through a subsidiary, its parent savings association shall send written notification and a copy of any prospectus, offering circular, or other similar document concerning such an issuance to its District Director.

(3) Any savings association that fails to meet its regulatory capital requirement as provided in § 567.2 of this subchapter, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through a subsidiary described in paragraph (a)(1)(ii) of this section without the prior written approval of the savings association's District Director. To obtain the written approval of the District Director, the board of directors of the savings association, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (e)(1) of this section, as well

as any additional information required

by the District Director.

(4) Within 10 days of the filing of an application specifically designated as filed pursuant to paragraph (e)(3) of this section or any additional information by a savings association subject to paragraph (e)(3) of this section, the District Director shall notify the applicant in writing either that all information required has been filed or that additional specific information must be filed. If the District Director does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be

approved.

(5) The District Director shall approve the application of a savings association subject to the requirements of paragraph (e)(3) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of an additional amount of securities issued through a subsidiary described in paragraph (a)(1)(ii) of this section is likely to affect adversely the financial condition or the safe and sound operation of the parent savings association. An adverse determination made by the District Director may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Office. The savings association shall file its petition with the Office of the Secretary to the Office and shall send a copy to the District Director. The Office shall grant or deny a petition for reconsideration filed pursuant to paragraph (e)(3) of this section in writing within 30 days of receipt. If the Office does not deny such a petition within the prescribed time, the Office shall be deemed to have granted the petition for reconsideration.

### § 563.133 Sale of Federal Home Loan Mortgage Corporation preferred stock.

(a) A savings association that fails to satisfy its minimum regulatory capital requirement as set forth in §§ 567.2 and 567.3 of this subchapter, notwithstanding any previously granted capital forbearances, shall not sell or buy Federal Home Loan Mortgage Corporation preferred stock except as approved by the District Director or his or her designee, subject to the concurrence of the Senior Deputy Director for Supervision (Operations). The District Director or his or her designee, may impose any conditions he or she deems appropriate in granting such approval, subject to the concurrence of the Senior Deputy Director for Supervision (Operations).

(b) A savings association that fails to satisfy the regulatory capital requirement set forth in §§ 567.2 and 567.3 of this subchapter shall make written application to the District Director for permission to buy or sell preferred stock of the Federal Home Loan Mortgage Corporation. The written application shall provide the District Director or his or her designee with sufficient information to demonstrate how the proposed sale or purchase of such preferred stock will affect the overall level of risk of the association's portfolio, as well as any additional information which the association may deem relevant to supervisory review. In evaluating the overall risks posed by the sale or purchase of preferred stock to the association's portfolio, the District Director or his or her designee shall consider the purposes for which such sale proceeds will be used, the effect of investment of the proceeds on the composition and quality of the association's asset portfolio, the association's growth plans, the likely effect on the association's liquidity, as well as any additional relevant information the District Director or his or her designee may seek in evaluating overall portfolio risk.

(c) Except as approved by its District Director or his or her designee, subject to the concurrence of the Senior Deputy Director for Supervision (Operations), a savings association that fails to satisfy its fully phased-in regulatory capital requirement as set forth in §§ 567.2 and 567.3 of this subchapter,

notwithstanding any previously granted capital forbearances, shall not be permitted to declare a dividend, repurchase its own stock, or take any equivalent action that might impair its

ability to attain its fully phased-in regulatory capital requirement unless it has first subtracted any gain realized from the sale of Federal Home Loan Mortgage Corporation preferred stock

from its earnings.

### Subpart F—Financial Management Policies

### § 563.160 Classification of certain assets.

(a) Scope. The classification system described in this section applies to all assets or portions thereof held by a

savings association.

(b) Classifications—(1) Substandard. Assets classified Substandard are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses. They are characterized by the distinct possibility that the savings association

will sustain some loss if the deficiencies are not corrected.

(2) Doubtful. Assets classified
Doubtful have all the weaknesses
inherent in those classified Substandard
with the added characteristic that the
weaknesses make collection or
liquidation in full, on the basis of
currently existing facts, conditions, and
values, highly questionable and
improbable.

(3) Loss. Assets classified Loss are considered uncollectible and of such little value that their continuance as assets without establishment of a specific reserve is not warranted. This classification does not mean that an asset has absolutely no recovery or salvage value, but, rather, that it is not practical or desirable to defer writing off a basically worthless asset even though partial recovery may be effected in the future.

(c) Implementation of classification system. (1) In connection with examinations of a savings association or its affiliates, the examiner shall have authority to identify problem assets and, if appropriate, classify them.

(2) Each savings association shall classify its own assets on a regular basis. In addition to any other remedies available to the Office under applicable statutes and regulations, a savings association's failure to set aside prudent valuation allowances, or to monitor portfolio risk with an effective self-classification procedure, will be considered by the examiner or the District Director in determining the amount of valuation allowances to be established by such savings association.

(3) In its quarterly reports to the Office, each savings association shall include aggregate totals of assets that the savings association has classified in each of the three asset classification categories, and the aggregate general and specific valuation allowances established. To the extent a savings association's specific valuation allowances have decreased from the previous reporting period, such savings association shall identify the amount of the decrease attributable to a savings association's between-examination upgrading of classifications.

(d) Effect of classification. (1) When, pursuant to this section, a savings association has classified one or more assets, or portions thereof, Substandard or Doubtful, the savings association shall establish prudent general allowances for loan losses. When, pursuant to this section, an examiner has classified one or more assets or portions thereof Substandard or Doubtful and has determined that the

existing valuation allowances are inadequate, the savings association shall establish general allowances for loan losses in an appropriate amount as determined by the examiner, subject to approval of the District Director.

(2) When, pursuant to this section, either a savings association or an examiner has classified one or more assets or portions thereof Loss, the savings association shall either establish specific allowances for loan losses in the amount of 100 percent of the portion of the asset(s) classified Loss, or charge off such amount.

(3) Adequate valuation allowances consistent with generally accepted accounting principles shall be established for classified assets. Asset evaluations (and the corresponding allowances) that are consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

(e) Assets deserving "Special Mention". Assets that do not currently expose a savings association to a sufficient degree of risk to warrant classification under paragraph (b) of this section but do possess credit deficiencies or potential weaknesses deserving management's close attention shall be designated "Special Mention" by either the savings association or the examiner. Special Mention assets have a potential weakness or pose an unwarranted financial risk that, if not corrected, could weaken the asset and increase risk in the future.

(f) Delegations and interpretations. (1)
The District Director may approve,
disapprove, or modify any
classifications of assets made pursuant
to this section and any amounts of
allowances for loan losses established
by savings associations or required by
examiners pursuant to this section.

(2) When an appraisal is required or made in connection with any re-evaluation of assets, the District Director may approve or reject the appraisal and any valuation related to it

(3) The Senior Deputy Director for Supervision (Policy) shall, from time to time, issue supervisory interpretations and other informational material regarding classification of assets. See § 571.26 of this subchapter containing the Office's statement of policy on the classification of assets.

(4) The District Director may delegate functions assigned under this section within its office.

### § 563.161 Management and financial

(a) For the protection of its account holders and other savings associations each savings association and service

corporation thereof shall maintain safe and sound management and shall pursue financial policies that are safe and consistent with economical home financing and the purposes of federal savings associations and are appropriate to their respective types of operations; in implementing this regulation the Office will take into consideration that service corporations may be authorized to engage in activities which involve a higher degree of risk than do activities permitted to savings associations.

(b) Compensation to officers, directors, and employees of each savings association and its service corporations shall not be in excess of that which is reasonable and commensurate with their duties and responsibilities. Former officers, directors, and employees of savings association or its service corporation who regularly perform services therefor under consulting contracts are employees thereof for purposes of this paragraph (b).

## § 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

(a) Examinations and audits. (1) Each savings association and affiliate thereof shall be examined periodically, and may be examined at any time, by the Office, with appraisals when deemed advisable, in accordance with general policies from time to time established by the Office. The costs, as computed by the Office, of any examinations made by it, including office analysis, overhead, per diem, travel expense, other supervision by the Office, and other indirect costs, shall be paid by the savings associations examined, except that in the case of service corporations of Federal savings associations the cost of examinations, as determined by the Office, shall be paid by the service corporations. Payments shall be made in accordance with a schedule of annual assessments based upon each savings association's total assets and of rates for examiner time in amounts determined by the Office.

(2) Each savings association and service corporation thereof shall be audited at least once in each calendar year by auditors and in a manner satisfactory to the Office in accordance with general policies from time to time established by the Office. The Office may at any time make, or cause to be made, an audit of a savings association or service corporation thereof, with appraisals when deemed advisable. A savings association and each of its service corporations shall promptly file with the Office, through the Office's

District Director of the District where the principal office of the association is located, a copy of the consolidated or separate report of each audit, other than audits made by the Office, made pursuant to this paragraph (a)(2). If a consolidated report is filed, such report shall include, either by footnote or in a schedule or schedules, the balance sheet and statement of income for the savings association and each of its service corporations included in said consolidated report. If separate reports of audits are issued, a copy of each such report shall be filed as provided herein. The cost of any audit made pursuant to this paragraph (a)(2) shall be paid by the savings association or service corporation audited.

(b) Appraisals. (1) Unless otherwise ordered by the Office, appraisal of real estate by the Office in connection with any examination or audit of a savings association, affiliate, or service corporation shall be made by an appraiser, or by appraisers, selected by the Office's District Director of the District in which such savings association is located. The cost of such appraisal shall promptly be paid by such savings association, affiliate, or service corporation direct to such appraiser or appraisers upon receipt by the savings association, affiliate, or service corporation of a statement of such cost as approved by such District Director, A copy of the report of each appraisal made by the Office pursuant to any of the foregoing provisions of this section shall be furnished to the savings association, affiliate, or service corporation, as appropriate within a reasonable time, not to exceed 90 days, following the completion of such appraisals and the filing of a report thereof by the appraiser, or appraisers, with such District Director.

(2) The Office may obtain at any time, at its expense, such appraisals of any of the assets, including the security therefor, of a savings association, affiliate, or service corporation as the Office deems appropriate.

(c) Establishment and maintenance of records. To enable the Office to examine savings associations and affiliates and audit savings associations, affiliates, and service corporations pursuant to the provisions of paragraph (a) of this section, each savings association, affiliate, or service corporation shall establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts, and the documents, files, and other material or property comprising said records shall at all times be available for such

examination and audit wherever any of said records, documents, files, material, or property may be. Without any limitation on the generality of the foregoing sentence, at a minimum savings associations and service corporations ("lenders") shall establish and maintain the following records:

(1) Records with respect to loans secured by real estate. The records of a lender with respect to each loan that such lender makes on the security of

real estate shall include:

(i) An application for the loan, signed by the borrower or its agent, in such form and containing such information as will disclose the purpose for which the loan is sought (for example, construction, purchase, refinancing) and the identity of any security property;

(ii) A note evidencing the borrower's obligation to repay the amount of the loan, executed by the borrower or its

agent;

(iii) A copy of the deed of trust or mortgage instrument on said real estate or other document customarily used in the jurisdiction in which such real estate security is located evidencing the creation of a security interest in the real estate for the benefit of the lender, which deed of trust, mortgage instrument, or other document has been signed by the borrower or the borrower's agent; and if the loan is made for the purpose of financing the purchase of the real estate security for the loan, a signed statement by the borrower or its agent, as a part of or as an attachment to the application for the loan, disclosing the purchase price of

such real estate security;

(iv) One or more written appraisal reports, prepared at the request of the lender or its agent and for the lender's use, and signed prior to the approval of such application (except in the case of an approval conditioned upon obtaining an appraisal) that satisfies the requirements of § 563.171 of this part, or, if such loan is an insured loan or a guaranteed loan, a certification of the valuation assigned to real estate security by the appraiser accepted by the insuring or guaranteeing agency and furnished to the lender by such agency: Provided, however, That nothing in this paragraph (c)(1)(iv) shall apply to property improvement loans, as that term is used in 24 CFR 200.167, insured by the Federal Housing Administration for which that agency does not require an appraisal or certification of valuation:

(v) A financial statement, which is current at the time that the loan application is made, signed by the borrower disclosing its financial ability to repay the loan, or a written credit report prepared by the lender or by others at the special instance and request of such lender;

(vi) Documentation showing when and by whom such loan was approved and any terms and conditions of such

approval;

(vii) Documentation showing the date, amount, purpose, the recipient of every disbursement of the proceeds of such loan, and to the best of the lender's knowledge, any actual recipient of any proceeds when the stated recipient is acting as an agent or intermediary for another;

(viii) For each loan made for the purpose of developing or constructing improvements on real estate, inspection reports prepared by or for the lender or vouchers signed by the borrower or its agent demonstrating that the work for which each disbursement is sought has

been completed;

(ix) An opinion signed by the lender's attorney, a title insurance policy, or other documentary evidence customarily used in the jurisdiction in which the real estate security is located, affirming the quality and validity of the lender's lien on the real estate security for the loan: Provided, however, That such documentary evidence shall not be required with respect to any loan having Federal Housing Administration mortgage insurance as to which 24 CFR 203.390 and 203.402 are applicable, and any such loan may be considered to be secured by a first lien without new title evidence;

(x) Documentation showing that the lender, upon the closing of the loan, furnished to the borrower a loan settlement statement setting forth in detail the charges or fees such borrower has paid or is obligated to pay to such lender or to any other concern or person in connection with such loan, which documentation shall include a copy of such loan settlement statement;

(xi) A record showing the status and current payment of taxes, assessments, insurance premiums, other charges on the security for the loan, and documenting any loss incurred on the loan security, as well as any amounts recovered pursuant to an insurance settlement of such loss;

(xii) Documentation evidencing any modifications of the original documents by which a security interest for the benefit of the lender was created, showing appropriate approval of each party to such modification; and

(xiii) Documentation evidencing any release of any portion of the collateral pledged to secure the loan, showing the portion of the collateral released, the consideration, if any, paid to effect such

release, and a record of the appropriate approval of each such release.

(2) Records with respect to loans not secured by real estate. The records of a lender with respect to each unsecured loan or loan not secured by real estate that such lender makes shall include the documents referred to in paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(v), (c)(1)(vi), and (c)(1)(vii) of this section. If the loan is secured by collateral other than real estate, the lender's records also shall include documents evidencing the creation and perfection of a security interest in the collateral, including any financing statement, as well as the documents referred to in paragraphs (c)(1)(xii) and (c)(1)(xiii) of this section. In addition, if the loan is made to a business entity, the lender's records shall include documentation showing whether the obligor on the loan is able to generate sufficient cash flow to meet scheduled interest and debt reduction payments and, if not sufficient, the lender's records shall include documentation demonstrating the anticipated source of the borrower's payments.

(3) Records with respect to loan purchases or participations. (i) The records of a lender with respect to each loan that it purchases, in whole or in part, that is secured by real estate shall include copies of the documents referred to in paragraphs (c)(1)(i) through (c)(1)(v), (c)(1)(ix), and (c)(1)(xiii) of this section. A single lender purchasing a whole loan secured by real estate must retain documents evidencing the assignment to it of the mortgage or deed

of trust.

(ii) The records of the lender with respect to loans it has purchased, in whole or in part, that are unsecured or secured by collateral other than real estate shall include copies of the documents referred to in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(v) of this section. If the loan is made to a business entity and is unsecured or secured by collateral other than real estate, copies of documentation of the obligor's cash flow or other anticipated source of the borrower's payments, as described in paragraph (c)(2) of this section, must be included. If the loan is secured by collateral other than real estate, the purchasing lender must retain copies of documents required by paragraph (c)(1)(xiii) of this section and those evidencing creation and perfection of a security interest for its benefit in the collateral, including any financing statement, signed by the borrower or its agent.

(iii) In addition to the requirements of paragraphs (c)(3)(i) and (c)(3)(ii) of this

section a lender purchasing all or any part of any loan must retain the originator's or the selling lender's statement concerning whether, on the date the loan is purchased, the payments are current and, if not current, the period for which the loan is delinquent; any agreement concerning participation in or servicing of the loan; and a copy of the underwriting standards of the originator. In addition, a purchaser must retain the written agreement of the seller of the loan to provide access, upon request, to all loan documentation in its possession or control to the purchasing lender, the Office, its District Director, or the examinations and supervision staff, as well as the seller's written certification that copies of any documents concerning the loan provided to the loan purchaser are accurate and complete to the best of the seller's knowledge.

(4) Records with respect to loans secured by timeshare accounts receivable. In addition to the records required by the applicable provisions of paragraphs (c)(1), (c)(2), and (c)(3) of this section, the records of a lender concerning loan purchases, participations, or originations of loans secured by timeshare accounts receivable, including fee, right-to-use, or membership interests, shall include any additional documents necessary to make those records accurate and complete, as this requirement is interpreted by the the Senior Deputy Director for Supervision (Operations).

(5) Records with respect to property purchased subject to a lender's lien or a secured loan assumed by a third party. When a property on which the lender has a lien securing an unpaid loan is sold to a third party and the lender releases the original borrower from such indebtedness, the records of the lender shall contain such documentation and records with respect to such third party and such transaction as are required by paragraphs (c)(1)(ii), (c)(1)(iii), (c)(1)(vi), (c)(1)(vi), (c)(1)(xii) of this section.

(6) Records with respect to loans sold. The records of a lender with respect to each loan it sells, whether in whole or in part, shall include a signed opinion by such lender's attorney stating whether the terms of the sales agreement governing such sale provide for a sale without recourse.

(7) Records with respect to the acquisition of mortgaged security. A lender shall maintain a record which discloses every instance that it commences action to acquire the real estate security for a loan, by foreclosure or otherwise, and the ultimate disposition of such action. Such record

shall include identification of the real estate security and loan, shall itemize all fees and charges incurred in such action, shall name the recipient or recipients to whom any such fees and charges were paid, and shall identify the holder of title to such real estate as a result of such action.

(8) Records with respect to accounts. The records of a savings association with respect to each withdrawable or repurchasable share, investment certificate, deposit, or savings account it issues shall include the signature of the owner of such account or the duly authorized representative of such owner, together with a record reflecting the balance in such account. Notwithstanding the preceding requirement, no account signature card for a trust executed by its trustee(s) of information disclosing the names of the settlor or trustee(s) of the trust need be maintained in the records of a savings association.

(9) Other records. A lender shall establish and maintain such other records as are required by statute or by any other regulation to which the lender is subject.

(d) Change in location of records. A savings association shall not transfer the location of any of its general accounting or control records from its home office to a branch or service office, or from a branch or service office to its home office or to another branch or service office unless the savings association has sent prior written notice of such transfer to the District Director of the District in which the principal office of the savings association is located.

(e) Use of data processing services for maintenance of records. A savings association which determines to maintain any of its records by means of data processing services shall so notify the District Director of the District in which the principal office of such savings association is located, in writing, at least 90 days prior to the date on which such maintenance of records will begin. Such notification shall include identification of the records to be maintained by data processing services and a statement as to the location at which such records will be maintained. Any contract, agreement, or arrangement made by a savings association pursuant to which data processing services are to be performed for such savings association shall be in writing and shall expressly provide that the records to be maintained by such services shall at all times be available for examination and audit.

§ 563.171 Appraisal policies and practices of savings associations and service corporations.

(a) Introduction. The soundness of a savings association's mortgage loans and real estate investments, and those of its service corporation(s), depends to a great extent upon the adequacy of the loan underwriting used to support these transactions. An appraisal standard is one of several critical components of a sound underwriting policy because appraisal reports contain estimates of the value of collateral held or assets owned. This section sets forth the responsibilities of management to develop, implement, and maintain appraisal standards in determining compliance with the appraisal requirements of §§ 563.170 and 563.172 of this part.

(b) Definitions. For purposes of this section:

(1) Management means: The directors and officers of a savings association, or service corporation of such savings association, as those terms are defined in §§ 561.18 and 561.35 of this subchapter, respectively;

(2) Market value means: (i) The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

 (A) Buyer and seller are typically motivated;

(B) Both parties are well informed or well advised, and each acting in what he considers his own best interest;

(C) A reasonable time is allowed for exposure in the open market;

(D) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(ii) Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs that are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party

institution lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession, but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

(3) Proposed tract development means a project of five units or more that is planned and constructed as a single

development.

(c) Responsibilities of management. An appraisal is a critical component of the loan underwriting or real estate investment decision. Therefore, management shall develop, implement, and maintain appraisal policies to ensure that appraisals reflect professional competence and to facilitate the reporting of estimates of market value upon which savings associations may rely to make lending decisions. To achieve these results:

(1) Management shall develop written appraisal policies, subject to formal adoption by the savings association's board of directors, that it shall implement in consultation with other appropriate personnel. These policies shall include, but are not limited to, all of the following requirements.

(i) Appraisals shall be based upon the definition of market value as set forth in paragraph (b)(2) of this section.

(ii) Appraisals shall be presented in a narrative format. An appraisal shall be sufficiently descriptive to enable a reviewer readily to ascertain the estimated value and the rationale for that estimate. The analysis of the market value estimate reported shall be commensurate in its detail and complexity with the complexity of the real estate appraised.

(iii) Appraisals shall disclose, analyze, and report in reasonable detail any prior sales of the property being appraised that occurred within the following time

periods:

(A) For one-to-four family residential property, one year preceding the date when the appraisal was prepared;

(B) For all other property, three years preceding the date when the appraisal

was prepared.

(2) Management shall develop and adopt guidelines and institute procedures pertaining to the hiring of appraisers to perform appraisal services for the savings association. These guidelines shall set forth specific factors to be considered by management including, but not limited to, an appraiser's professional education, type of experience, and membership in professional appraisal organizations in

determining whether to employ an appraiser.

(3) Management shall review on an annual basis the performance of all approved appraisers used within the preceding 12-month period for compliance with (i) the savings association's appraisal policies and procedures; and (ii) the reasonableness of the value estimates reported.

(d) Exemptions. The requirements of paragraph (c)(1) of this section shall not

apply with respect to:

(1) Appraisals on existing or proposed one-to-four family and existing multifamily properties prepared on forms approved by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in compliance with the appraisal standards approved by those agencies. This exemption does not apply to proposed tract developments; or

(2) Appraisals on nonresidential properties prepared on form reports approved by the Office and completed in accordance with the applicable

instructional booklet.

# § 563.172 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) Real estate owned. A savings association shall appraise each parcel of real estate owned at the earlier of insubstance foreclosure or at the time of the savings association's acquisition of such property, and at such times thereafter as dictated by prudent management policy. The District Director or his or her designee may require subsequent appraisals if, in his or her discretion, such subsequent appraisal is necessary under the particular circumstances. The foregoing requirement shall not apply to any parcel of real estate that is sold and reacquired less than 12 months subsequent to the most recent appraisal made pursuant to this paragraph (a). A dated, signed copy of each report of appraisal made pursuant to any provisions of this paragraph (a) shall be retained in the savings association's

(b) Re-evaluation of loans and other assets. In connection with each examination of a savings association or service corporation, the Office's examiner shall make such re-evaluation of such savings association's or service corporation's assets (exclusive of insured or guaranteed loans) as deemed advisable or necessary. Any such re-evaluation of real estate or real estate collateral shall be based on net realizable value and should take into consideration the availability of compensation by private mortgage

insurance to the extent of its probability of payment.

(c) Adjustment of book value. If the reevaluation of assets by a savings association or otherwise, as ordered by the Office, disclose that any asset of a savings association or service corporation is overvalued on its books (exclusive of overvaluation due to fluctuations in value which are caused by changes solely in market interest rates), such savings associations or service corporation shall, at the direction of the District Director, make an adjustment of the book value of such asset, and, unless otherwise directed by the District Director, such adjustment shall be made by establishing and maintaining a specific reserve in an amount equal to the overvaluation. When an appraisal is required and made in connection with any re-evaluation of assets, the District Director shall have the final authority to approve or reject any or all appraisals or valuations related thereto.

(d) Adjustment charges. Adjustment of the book value of an asset by a savings association or service corporation pursuant to any provision of this section may be made by charge against such savings association's or service corporation's previously established allowances, if any, and then against earnings for the period in which such charge is made. Any recovery of any portion of any amount previously charged against allowances established for the sole purpose of absorbing losses shall be credited to such allowances; such credit shall be in addition to all other required credits to such allowances. Any recovery of any portion of any amount previously charged against earnings shall be credited to earnings for the period in which such recovery is effected. For the purposes of this paragraph (d), any charge against a specific allowance established pursuant to any provision of this section shall be deemed to be a recovery on an asset, the book value of which was previously adjusted unless such charge is made for the purpose of concurrently writing down the book value of such asset.

### § 563.173 Forward commitments.

(a) Definitions—(1) Forward commitment. The term "forward commitment" means an oral or written contract to buy securities 30 or more days after the contract date; such a commitment is a standby commitment if delivery is optional with the seller and a firm commitment if both buyer and seller are obligated to perform on the agreed date.

(2) Securities. The term "securities" means assets in which the savings association is authorized to invest (except financial futures or financial options contracts entered into pursuant to § 563.174 or § 563.175 of this part).

(3) Commitment fee. The term
"commitment fee" means any
consideration received directly or
indirectly by a savings association for a

forward commitment.

(b) Authorized personnel. The minutes of the board of directors of the savings association shall set out the names, duties, responsibilities, and current limits of authority of the savings association's personnel authorized to engage in forward commitment transactions for the savings association; the brokerage firms through which authorized personnel may conduct forwards activity; and the dollar limit on transactions with each such firm.

(c) Limitations—(1) General. A savings association may make forward commitments to purchase securities, subject to the limits in paragraph (c)(2) of this section, if that activity is conducted in a safe and sound manner. An example of an unsafe and unsound practice which may preclude further investment under this section is an inability to fund commitments when due. No savings association may sell a forward commitment or security under agreement to purchase another forward commitment or security at a price other than actual market value.

(2) Percent of assets. A savings association's outstanding forward commitments to purchase securities plus short put options entered into pursuant to § 563.175 of this part may not exceed an amount equal to 5 percent of its assets if regulatory capital is 3 percent or less of assets, 10 percent of its assets if regulatory capital is over 3 percent but less than 5 percent of assets, or 15 percent of its assets if regulatory capital is 5 percent or more of assets.

(d) Disposal before settlement. All profit or loss related to disposal or modification of a forward commitment before settlement shall be recognized on the savings association's books at the time of disposal or modification.

(e) Recordkeeping requirements. A savings association engaging in forward commitments shall establish and maintain the following:

(1) A current register of all outstanding forward commitments, including the type (firm or standby), commitment date, amount, rate, price to be paid at settlement, market price at date of commitment, settlement date, commitment fees received, date and manner of disposal, sales price and market value at disposal if disposition is

made on or prior to settlement date other than through funding, and seller's identity and confirmation; and

(2) Documentation of the savings association's ability to fund all outstanding forward commitments when due.

(f) Commitment fees received. A fee received for a forward commitment shall be recorded according to generally accepted accounting principles for loan commitment fees. If the commitment period is 30 days or less, a fee shall be deferred over at least ten years.

### § 563.174 Futures transactions.

(a) Definitions. As used in this section, the following definitions apply unless the context otherwise requires:

(1) Forward commitment. The term "forward commitment" means a written commitment to make, purchase or issue mortgage loans or mortgage-related securities at a price and on or before a date specified in the commitment.

(2) Financial futures transaction. The term "financial futures transaction" means the purchase or sale of a financial futures contract.

(3) Long position. The term "long position" means the purchase of a financial futures contract to take delivery of a financial instrument.

(4) Mortgage-related securities. The term "mortgage-related securities" means securities based on and backed by mortgages, including mortgage-backed securities guaranteed by the Government National Mortgage Association ("GNMAs"), Mortgage Participation Certificates of the Federal Home Loan Mortgage Corporation, and similar obligations issued by the savings association or in which the savings association is authorized to invest.

association is authorized to invest.

(5) Offset. The term "offset" means to cancel an obligation to make or take delivery of securities under a financial instrument under a financial futures contract. A futures contract to purchase a financial instrument is offset by a futures contract to sell a financial instrument of the same type for the same delivery month. A futures contract to sell a financial instrument is offset by a futures contract to purchase a financial instrument of the same type for the same delivery month.

(6) Short position. The term "short position" means the holding of a financial futures contract to make delivery of a financial instrument.

(b) Permitted transactions. To the extent that it has legal power to do so, a savings association may engage in interest-rate futures transactions to reduce its net interest-rate risk exposure as provided in this paragraph (b). For purposes of this section, net interest-rate

risk exposure is the volatility in a savings association's earnings that can arise from the mismatching of the effective maturities of assets and liabilities. A savings association may enter into short positions that are appropriate for reducing its net interestrate risk exposure. A savings association may enter into long positions, other than those that offset short positions, only under the following conditions:

(1) The futures position must be matched against a firm forward commitment to sell mortgages not yet originated or to issue mortgage-related securities to be based on mortgages not yet originated. For purposes of this paragraph (b), a firm forward commitment is a written commitment obligating the seller to make delivery, and the buyer to take delivery, of mortgage loans not yet originated or mortgage-related securities to be based on mortgages not yet originated, at a price and on or before a date specified in the commitment; and

(2) The futures position may be entered into and maintained only to the extent that the savings association's firm forward commitments exceed 10 percent of long-term assets with fixed interest rates. For purposes of this section, long-term assets are those having remaining terms to maturity in

excess of five years.

Until August 3, 1981, savings associations may continue to engage in interest-rate futures transactions as authorized immediately prior to July 10, 1981. Savings associations with interest-rate futures positions entered into before August 3, 1981, that are not permitted under this paragraph (b), will be permitted to continue to hold those futures contracts: Provided, That the interest-rate futures transactions were authorized when entered into and the contracts are not renewed.

(c) Authorized contracts. A savings association may engage in interest-rate futures transactions using any interest-rate futures contracts designated by the Commodity Futures Trading Commission and based upon a financial instrument in which the savings association has authority to invest in or to issue.

(d) Board of directors' authorization. Prior to engaging in interest-rate futures transactions, a savings association's board of directors must authorize such activity. In authorizing futures trading, the board of directors shall consider any plan to engage in financial futures transactions, shall endorse specific written policies, and shall require the establishment of internal control

procedures. Policy objectives must be specific enough to outline permissible contract strategies, taking into account price and yield correlations between assets or liabilities and the financial futures contracts with which they are matched; the relationship of the strategies to the savings association's operations; and how such strategies reduce the savings association's net interest-rate risk exposure. Internal control procedures shall include, at a minimum, periodic reports to management, segregation of duties and internal review procedures. In addition, the minutes of the meeting of the board of directors shall set forth limits applicable to futures transactions, identify personnel authorized to engage in futures transactions, and set forth the duties, responsibilities and limits of authority of such personnel. The board of directors shall review the position limit, all outstanding contract positions, and the unrealized gains or losses on those positions at each regular meeting of the board.

(e) Notification. A savings association engaging in financial futures transactions shall notify its District Director that it is engaging in such transactions. The savings association shall report its gross outstanding long and short financial futures positions on the Office Monthly Report.

(f) Recordkeeping requirements. A savings association engaging in financial futures transactions shall maintain records of such transactions sufficient to document how the transactions reduce the net interest-rate risk exposure of the savings association in accordance with the following requirements:

(1) Contract register. The savings association shall maintain a contract register adequate to identify and control all financial futures contracts and including, at a minimum, the type and amount of each contract, the maturity date of each contract, the cost of each contract, the dollar amount and description of the asset or liability with which the futures contract is matched, and the date and manner in which a contract is closed out. Such register shall be prepared in a manner sufficient to indicate at any time the savings association's total outstanding long and short financial futures positions.

(2) Other documentation. The savings association shall maintain, as part of the documentation of its financial futures strategy, a schedule of the assets and the liabilities for which net interest-rate risk exposure is being reduced and the purpose of each contract entered into.

(3) Maintenance of records. The records designated in this paragraph (f)

shall be maintained for all futures transactions closed-out during the preceding two years.

### § 563.175 Financial options transactions.

(a) Definitions. As used in this section, the following definitions apply unless the context otherwise requires:

(1) Call. The term "call" means an option which gives the holder the right to purchase a financial instrument at a price and on or before the expiration date specified in the option contract.

(2) Deliverable instrument. The term "deliverable instrument" means a financial instrument whose terms satisfy the requirements for fulfilling delivery obligations of an option.

(3) Effective exercise price. The term "effective exercise price" means the yield equivalent price of an instrument whose coupon rate differs from the standard instrument specified in the option.

(4) Financial options contract. The term "financial options contract" means an agreement (other than an optional delivery forward commitment contract to purchase and sell mortgages or mortgage-backed securities when used as part of the mortgage loan origination process) to make or take delivery of a financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement, under terms and conditions established either by—

(i) A board of trade designated as a contract market for the trading of option contracts by the Commodity Futures Trading Commission ("CFTC") or a national securities exchange registered with the Securities Exchange Commission (SEC); or

(ii) The savings association and a "permissible counterparty," as defined in paragraph (a)(13) of this section, that are counterparties in an over-the-counter option transaction (other than an over-the-counter commodity option transaction subject to the jurisdiction of the CFTC that is not otherwise authorized under the Commodity Exchange Act and the regulations thereunder).

(5) Financial options transaction. The term "financial options transaction" means the purchase or sale of a financial options contract.

(6) Immediate exercise value. The term "immediate exercise value" means the market value gained by exercising an option with the lowest cost deliverable instrument at its effective exercise price compared to purchasing (or selling) an identical instrument with the same coupon rate in the cash market.

(7) Long position. The term "long position" means the holding of a financial options contract with the option to make or take delivery of a financial instrument.

(8) Option commitment fee. The term "option commitment fee" means the option premium minus the immediate exercise value of the option.

(9) Option premium. The term "option premium" means the price paid or received for establishing an option position.

(10) Put. The term "put" means an option which gives the holder the right to sell a financial instrument at a price and on or before the expiration date specified in the financial options contract.

(11) Short position. The term "short position" means a commitment through a financial options contract to stand ready during the term of the contract to make or take delivery of a financial instrument.

(12) Primary dealer in government securities. The term "primary dealer in government securities" means any member of the Association of Primary Dealers in United States Government Securities and any parent, subsidiary, or affiliated entity of such primary dealer: Provided, that the member guarantees (to the satisfaction of the Office) the over-the-counter financial options transactions between its parent, subsidiary, or affiliated entity with a savings association, and Provided further, that the parent, subsidiary, or affiliated entity is substantially engaged in similar activities.

(13) Permissible counterparty. The term "permissible counterparty" means any entity that is:

(i) A primary dealer as defined in paragraph (a)(12) of this section;

(ii) A bank subject to the regulation and supervision of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System and that is in compliance with applicable regulatory capital requirements;

(iii) A savings association that is subject to the regulation and supervision of the Office and is in compliance with applicable regulatory capital requirements;

(iv) A broker or dealer registered with the Securities and Exchange Commission ("SEC") and subject to regulation and supervision by a Registered Securities Association (registered pursuant to section 15A of the Securities and Exchange Act of 1934 ("Exchange Act")) or a National Securities Exchange (registered pursuant to sections 6 and 19(a) of the Exchange Act) and that is in compliance with applicable capital requirements;

(v) A government securities broker or dealer registered with the SEC that is subject to examination and supervision by a Registered Securities Association (registered pursuant to section 15A of the Exchange Act) or National Securities Exchange (registered pursuant to sections 6 and 19(a) of the Exchange Act) and that is in compliance with applicable capital requirements;

(vi) A futures commission merchant registered with the CFTC and that is in compliance with applicable capital

requirements:

vii) The Federal Home Loan Banks; (viii) The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage

Association; or

(ix) Any other entity that the Office, upon application, determines to be adequately regulated, capitalized, and audited or examined such that acting as a counterparty in an over-the-counter options transaction with a savings association would not entail substantial credit risks for the association. The Office delegates the authority to consider and approve such applications to the Senior Deputy Director for Supervision (Operations), with the concurrence of the Chief Counsel, or their respective designees.

(b) Permitted transactions. To the extent that it has legal power to do so, a savings association may engage in financial options transactions as provided in this paragraph (b).

(1) Long positions. A savings association may enter into long positions without numerical limit.

(2) Short positions. A savings association may enter into short call positions without numerical limit. A savings association may enter into short put options to the extent that the aggregate amount of its short put options and forward commitments to purchase securities does not exceed the limitations set forth in § 563.173(c)(2) of this part.

(c) Authorized contracts. A savings association may engage in financial options transactions using any financial

options contracts either-

(1) Designated by the CFTC or

approved by the SEC; or

(2) Entered into with a "permissible counterparty" (as defined in paragraph (a)(13) of this section) and based upon a financial instrument that the savings association has authority to invest in or

(d) Board of directors' authorization. Prior to engaging in financial options

transactions, a savings association's board of directors must authorize such activity. In authorizing options, the board of directors shall consider any plan to engage in writing or purchasing financial options contracts, shall endorse specific written policies, and shall require the establishment of internal control procedures. For options positions that will be matched with cash or forward market positions, policy objectives must be specific enough to outline permissible options contract strategies, taking into account price and vield correlations between assets or liabilities and the financial options contracts; the relationship of the strategies to the savings association's operations; the rationale for the ratio of the value of options positions to the value of the matched cash market positions; and how the options strategy reduces the savings association's interest-rate risk exposure. For unmatched option positions, policy objectives must specify the relationship of the strategy to the savings association's operations. Prudent business judgment shall be exercised by participating savings associations engaging in financial options transactions in order to maintain a safe and sound financial position. Internal control procedures shall include, at a minimum, periodic reports to management, segregation of duties and internal review procedures. In addition, the minutes of the meeting of the board of directors shall set forth limits applicable to financial options transactions, identify personnel authorized to engage in financial options transactions, and set forth the duties, responsibilities and limits of authority of such personnel. The board of directors shall review the position limit, all outstanding options contract positions, and the unrealized gains or losses on those positions at each regular meeting of the board.

(e) Notification, reporting, and approval. (1) A savings association shall notify the District Director of the District in which its principal office is located immediately following authorization of its board of directors to engage in financial options transactions. The savings association shall report its outstanding positions together with the total unrealized gain or loss from such

positions to the Office.

(2) A savings association shall not engage in over-the-counter financial option transactions with any permissible counterparty unless such counterparty agrees to notify the District Director of the District in which the principal office of the savings association is located immediately

following the entering into such transaction. A savings association shall not continue to engage in over-thecounter financial option transactions with any permissible counterparty that has failed to so notify the appropriate District Director with respect to previous over-the-counter financial option transactions with that savings association. Notwithstanding the foregoing, no savings association shall engage in a long over-the-counter financial option transaction with a specific permissible counterparty. without obtaining the prior approval of its District Director, whenever the aggregate exercise value of all long over-the-counter financial option positions with the counterparty exceeds the limitations contained in § 563.93(b)(1) of this part. A District Director may approve any financial option transaction whenever it determines that such transaction does not subject the SAIF to undue risk. In making such determinations, the District Director shall consider:

(i) The creditworthiness of the specific

counterparty. (ii) The savings association's experience with such counterparty and with transacting in financial option and futures contracts generally,

(iii) The nature of the subject contracts (e.g., matched or unmatched),

(iv) Any other circumstances deemed relevant by the District Director. An application to enter into a financial option transaction under this paragraph (e)(2) shall be deemed approved if the District Director does not deny such application within 10 calendar days from the date the application was filed.

(f) Recordkeeping requirements. A savings association engaging in financial options transactions shall maintain records of such transactions in accordance with the following

requirements:

(1) Contract register. The savings association shall maintain a contract register adequate to identify and control all financial options contracts and sufficient to indicate at any time the amounts of financial options contracts required to be reported on its monthly report. At a minimum, the register shall list the type, amount, expiration date and the cost of or income from each contract.

(2) Other documentation. The savings association shall maintain as part of the documentation of its financial options strategy a schedule of any cash market or forward commitment position with which the option is matched and the purpose of each contract.

(3) Maintenance of records. The records designated in this paragraph (f) shall be maintained for all financial options closed out during the preceding two years.

(g) Accounting-

(1) Purchase or sale. Upon initial purchase or sale of a financial options contract, a memorandum entry of the information specified in paragraph (f)(1) of this section shall be made and appropriate mergin accounts shall be established.

(2) Option commitment fee. (i) The option commitment fee paid for a long position or received from the sale of a short put option shall be amortized to income or expense over the term of the option, except as provided in paragraph

(g)(3)(ii) of this section.

(ii) The option commitment fee received from the sale of a matched short call option shall be deferred until the option position is terminated. The option commitment fee received from the sale of an unmatched short call option shall be amortized to income over the term of the option.

(3) Options contracts. (i) Gains or losses on options contracts that are matched with assets or liabilities carried at the lower of cost or market value or carried at market value shall be considered in determining the market

value of the asset or liability.

(ii) Options positions that are matched with assets or liabilities carried at cost or to be carried at cost shall be accounted for as follows:

(A) If a commitment fee will be or has been received with respect to the matched asset, the option commitment fee shall be treated as an adjustment of such fee. The adjusted commitment fee shall then be treated as a fee paid or received in connection with the matched

(B) If a commitment fee has not been received with respect to a matched asset, the option commitment fee (except if received for the sale of a short call option) shall be amortized to income or expense over the commitment period by the straight-line method;

(C) Any resulting gain or loss from an option position (except from a short call option) shall be treated as a discount or premium on the matched asset or

liability;

(D) Any resulting gain or loss from a short call option position shall be recognized as income or expense upon termination of the option position;

(E) In the event that an option position is not matched with a cash-market or forward-commitment position or if the cash-market or forward-commitment position with which an option is

matched is sold or will not occur, the option shall be marked to market.

(iii) The immediate exercise value of short puts and other unmatched option positions shall be carried at their current market value.

#### § 563.176 Interest-rate-risk-management procedures.

Savings associations shall take the following actions:

(a) The board of directors or a committee thereof shall review the savings association's interest-rate-risk exposure and devise a policy for the savings association's management of that risk.

(b) To assist in this review and formulation of policy, by October 31, 1984, the board of directors shall obtain an initial report from the management of the savings association containing at least the following information:

(1) Analyses of the difference between the dollar value of assets and liabilities with the same remaining term to repricing, or "gap" analyses, together with assumptions used to adjust contractual maturities to anticipated maturities; and

(2) Analyses of the impact of differing market-interest-rate scenarios on earnings, net asset values, and

regulatory capital.

(c) The board of directors shall formerly adopt a policy for the management of interest-rate risk. The management of the savings association shall establish guidelines and procedures to ensure that the board's policy is successfully implemented.

(d) The management of the savings association shall periodically report to the board of directors regarding implementation of the savings association's policy for interest-rate-risk management and shall make that information available upon request to the Office.

(e) The savings association's board of directors shall review the results of operations at least quarterly and shall make such adjustments as it considers necessary and appropriate to the policy for interest-rate-risk management, including adjustments to the authorized acceptable level of interest-rate risk.

(f) See also § 571.3 of this subchapter, containing the Office's statement of policy on interest-rate-risk management.

#### § 563.177 Procedures for monitoring Bank Secrecy Act compliance.

(a) Purpose. The purpose of this regulation is to require savings associations (as defined by § 561.43 of this subchapter) to establish and maintain procedures reasonably designed to assure and monitor

compliance with the requirements of Subchapter II of Chapter 53 of Title 31, United States Code, and the implementing regulations promulgated thereunder by the U.S. Department of Treasury, 31 CFR Part 103.

(b) Compliance procedure. On or before April 27, 1987, each savings association shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in Subchapter II of Chapter 53 of Title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of Treasury, 31 CFR Part 103. The compliance program shall be reduced to writing, approved by the savings association's board of directors, and reflected in the minutes of the savings association.

(c) Contents of compliance program. The compliance program shall, at a

minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by a savings association's in-house personnel or by an outside party;

(3) Designate individual(s) responsible for coordinating and monitoring day-to-

day compliance; and

(4) Provide training for appropriate personnel.

(Approved by the Office of Management and Budget under control number 3068-0530)

#### Subpart G-Reporting and Bonding

#### § 563.180 Criminal referrals and other reports or statements.

(a) Periodic reports. Each savings association and service corporation thereof shall make such periodic or other reports of its affairs in such manner and on such forms as the Office may prescribe. The Office may provide that reports filed by savings associations or service corporations to meet the requirements of other regulations also satisfy requirements imposed under this section.

(b) False or misleading statements or omissions. No savings association or director, officer, agent, employee, affiliated person, or other person participating in the conduct of the affairs of such association nor any person filing or seeking approval of any

application shall knowingly:

(1) Make any written or oral statement to the Office or to an agent, representative or employee of the Office that is false or misleading with respect to any material fact or omits to state a

material fact concerning any matter within the jurisdiction of the Office; or

(2) Make any such statement or omission to a person or organization auditing a savings association or otherwise preparing or reviewing its financial statements concerning the accounts, assets, management condition, ownership, safety, or soundness, or other affairs of the association.

(c) Notifications of loss and reports of increase in deductible amount of bond. A savings association maintaining bond coverage as required by § 563.190 of this part shall promptly notify its bond company and file a proof of loss under the procedures provided by its bond, concerning any covered losses greater than twice the deductible amount. Whenever a deductible amount specified in a bond is increased above the permissible deductible amount specified in the table in § 563.190(b) of this part, the affected savings association or service corporation shall report promptly the facts concerning such increase in writing to the District Director for the District where the association's principal office is located.

(d) Reports of crimes, suspected crimes, and unexplained losses—(1) Purpose and scope. Savings associations and service corporations are required to promptly notify the appropriate law enforcement authorities and the Office after discovery of known or suspected

criminal acts:

(i) If those acts involve affiliated persons (as defined in § 561.5 of this

subchapter);

(ii) If those acts involve actual or anticipated losses of more than \$1,000 and the association has a known factual basis for identifying a suspect or group of suspects;

(iii) If those acts result in a loss of \$5,000 or more, regardless of whether a

suspect is identified; or

(iv) If money laundering, engaging in monetary transactions known to have been derived from unlawful activities, or structuring a transaction to evade the reporting requirements of the Bank Secrecy Act (also known as the Currency and Foreign Transactions Act) is known or suspected.

This paragraph (d)(1) applies to known or suspected crimes involving savings association and service corporations committed either by their employees or others and to crimes or suspected crimes against another financial institution believed to be committed by a person associated with the reporting savings association or service corporation. As used in this paragraph (d)(1) the phrase "suspected crimes" refers to all matters, including unexplained losses, for which

there is a known factual basis for a belief that a crime has been or may have been committed. In the case of a crime or suspected crime against a service corporation that is either wholly or partly owned by a savings association, either the service corporation or the savings association may make the

(2) Filing of reports. Except as permitted under paragraph (d)(3) of this section and other than robberies, burglaries and non-employee larcenies for which a record must be kept under § 568.5 of this subchapter, a savings association or a service corporation shall notify the appropriate law enforcement authorities and the Office by filing OTS Form 366 within 14 business days after discovery of any crime, suspected crime, or unexplained loss suffered by the savings association or service corporation, including:

(i) Embezzlement, non-employee larceny, check-kiting operation, fraud or attempted fraud, unexplained loss, or other known or suspected misapplication of funds or other things of value belonging to a savings association or entrusted to its care;

(ii) Bank bribery, the corrupt offering, solicitation, or acceptance of things of value in connection with any transaction or business of a financial

institution;

(iii) False statements or reports or overvaluation of land, property or security, or omission to state or attempt to conceal information for the purpose of influencing the actions of a savings association or the Office; or

(iv) Other violations of statutes, as described in instructions to OTS Form

366.

(3) Oral reports. Required reports may be made orally in emergency cases, such as when it is likely that evidence or witnesses will become unavailable before a written report can be made; or where other circumstances dictate an immediate referral. In such cases, the report shall be documented by later completion and filing of the prescribed form(s), if required under paragraph (d)(2) of this section.

(4) Notification of the Board of Directors. The chief executive officer of the savings association or his designee shall notify the board of directors concerning any report filed pursuant to this paragraph (d)(4) by the association or a service corporation in which it has an ownership interest not later than its next regularly scheduled meeting following the filing of the report. If the chief executive officer is suspected of being involved in the violation, the next ranking officer shall notify the association's board.

(5) Maintenance of records. Reports made under this section and related records of all crimes or suspected crimes shall be maintained at the savings association's home office for ten years.

# § 563.181 Reports of change in control of mutual savings associations.

- (a) Reports of change in control—(1) When reports are required. Reports are required under this paragraph (a) whenever any change occurs in the control of savings association and no report is required under any other paragraph of this section. As used in this section, the term "control" means power, directly or indirectly, to direct or cause the direction of the management or policies of the savings association, and the term "savings association" means a mutual savings association. Reports shall be made to the Office by the president or other chief executive officer of the savings association involved within 15 days after he or she obtains knowledge of such change. If there is any doubt as to whether a change in control has occurred, such doubt shall be resolved in favor of reporting to the Office.
- (2) Contents of reports. Reports of change in the control of a savings association, as required under this paragraph (a), shall contain the following information to the extent that such information is known by the person making the report:
- (i) The name or names of the person or persons who acquired such control;
  - (ii) The basis of such control; and
- (iii) The date and a description of the transaction or transactions by which such control was acquired.
- (b) Reports of changes in voting stock or voting rights-(1) When reports are required. (i) Reports are required under this paragraph (b) whenever a change occurs in the outstanding voting stock or voting rights of a savings association resulting in control or a change in the control of such savings association. Reports shall be made to the Office by the president or other chief executive officer of the savings association involved within 15 days after he or she obtains knowledge of such change. If there is any doubt as to whether such a change has resulted in control or a change in control, such doubt shall be resolved in favor of reporting to the
- (ii) Without any limitation on the foregoing, a report is required under this paragraph (b) whenever any person, partnership, corporation, trust or group of associated persons acquires, receives, or becomes the holder of:

(A) Ten percent or more of the outstanding shares of any class of the voting stock of the savings association or of the voting rights thereto;

(B) Ten percent or more of the outstanding voting rights of the savings

association; or

(C) Any appointment, designation or right of substitution with respect to 10 percent or more of the outstanding voting rights of the savings association.

(2) Contents of reports—(i) General. The reports required under this paragraph (b) shall contain the items of information set forth below to the extent that such information is known by the person making the report. In addition, such reports shall contain such other information as may be available to inform the Office of the effect of the transaction upon control of the savings association.

(ii) Reports of changes in voting stock or voting rights with respect to such stock. Reports of changes in ownership of voting stock or holdings of voting rights with respect to such stock. resulting in control or a change in the control of a savings association, shall contain the following information:

(A) The number of shares of each class of voting stock and the number of voting rights with respect thereto

involved in the transaction;

(B) The names of the purchasers for transferees) of such stock or such voting rights;

(C) The names of the sellers (or transferors) of such stock or voting

(D) The amount of consideration received by the sellers (or transferors) in connection with the transaction;

(E) The names of the beneficial owners if the shares or voting rights are of record in another name or other names

(F) The total number of shares of each class of voting stock owned by the sellers (or transferors), the purchasers (or transferees), and the beneficial owners both immediately before and after the transaction;

(G) The total number of shares of each class of voting stock outstanding both immediately before and after the

transaction;

(H) The total number of voting rights (with respect to voting stock) held by the sellers (or transferors), the purchasers (or transferees), and the beneficial owners both immediately before and after the transaction;

(I) The total number of such voting rights outstanding both immediately before and after the transaction; and

(J) In the case of any appointment, designation, or substitution of a holder or holders of such voting rights, the

name or names of the holder or holders both immediately before and after the transaction.

(iii) Reports of changes in voting rights with respect to withdrawable accounts. Reports of changes in holding of voting rights with respect to withdrawable accounts, resulting in control or a change in the control of a savings association, shall contain the following information:

(A) In the case of a transfer or transfers of such voting rights from one holder or group of holders to another

holder or group of holders;

(1) The date of each such transfer; and (2) The name or names of the acquiring holder or holders and of the transferor or transferors (unless such transferors are the original owners of the accounts to which such voting rights

(B) In the case of any appointment, designation, or substitution of a holder or holders of voting rights, with respect to a holder or group of holders already having control:

(1) The date of such appointment, designation or substitution; and

(2) The names of each of the holders both immediately before and after such change: and

(C) In the case of any other acquisition of or change in control (without regard to the number of voting rights involved):

(1) The name or names of the person or persons acquiring such control;

(2) The basis of such control; and (3) The date and a description of such acquisition or change.

(c) Reports of solicitation of voting rights-(1) When reports are required. Reports are required under this paragraph (c) whenever any person, partnership, corporation, trust, or group of associated persons:

(i) Solicits voting rights with respect to 10 percent or more of the outstanding shares of any class of voting stock of a

savings association.

(ii) Solicits 10 percent or more of the outstanding voting rights in a savings association; or

(iii) Solicits any voting rights in a savings association when such solicitor already holds either:

(A) Voting rights with respect to 10 percent or more of the outstanding shares of any class of the voting stock of such savings association; or

(B) Ten percent or more of the outstanding voting rights in such savings

association.

(2) Content of reports—(i) General. The reports required under this paragraph (c) shall contain the items of information set forth below to the extent that such information is known by the

person making the report. In addition, such reports shall contain such other information as may be available to inform the Office of the possible impact of the solicitation upon control of the savings association.

(ii) Voting rights with respect to stock. Reports of solicitation of voting rights with respect to any class of voting stock of a savings association shall contain the following information:

(A) The name or names of the person or persons making the solicitation;

(B) The extent of such solicitation (including relevant dates) and the class or classes of such voting stock with respect to which the solicitation of voting rights is made;

(C) The number of shares of such class or classes of voting stock which the solicitor already owns and the total number of voting rights with respect thereto which he or she holds at the time of such solicitation; and

(D) The total number of shares of such class or classes of voting stock outstanding at the time of such solicitation.

(iii) Voting rights with respect to withdrawable accounts. Reports of solicitation of voting rights with respect to withdrawable accounts of a savings association shall contain the following information:

(A) The name or names of the person or persons making the solicitation;

(B) The extent of such solicitation (including relevant dates); and

(C) The approximate percentage of the outstanding voting rights which the solicitor already holds at the time of such solicitation.

(d) Definitions. As used in this

(1) The term stock means rights. interest, or powers with respect to a mutual savings association.

(2) The term voting rights means stock which carries voting rights.

(3) The term voting rights means proxies, consents, or authorizations which give the holder or holders the right to vote with respect to shares of voting stock, or with respect to withdrawable accounts, in a savings association.

§ 563.183 Reports of change in chief executive officer or director, other reports; form and filling of such reports.

(a) Definitions used in this section-(1) Control. The term "control" means power, directly or indirectly, to direct the management or policies of a savings association or to vote 25 percent or more of any class of the voting stock or voting rights in a savings association.

(2) Savings association. The term "savings association" means a savings association, whether in mutual or stock form, and any savings and loan holding company as defined in section 10 of the Home Owners' Loan Act.

(3) Stock. The term "stock" means any permanent or guaranty stock or other nonwithdrawable account, share, or equity security in a savings association.

(4) Voting stock. The term "voting stock" means any stock which carries

voting rights.

(5) Voting rights. The term "voting rights" means any proxies, consents, or authorizations which give the holder(s) the right to vote with respect to shares of voting stock or withdrawable accounts in a savings association.

(b) Reports of change in chief executive officer or director. Whenever a change resulting in control or a change in control of a savings association has occurred concurrently with or within 60 days after or 12 months before a change or replacement of the chief executive officer or any director of the savings association, a report shall be filed containing the following:

(1) The name of the new chief executive officer or director;

(2) The effective date of the person's appointment or election; and

(3) A statement of the person's past and current business and professional

(c) Form and filing of reports. (1) Unless otherwise specified by the Office, a report required by § 563.181 of this part or this section § 563.183 shall be by letter signed by the officer making the report with the original and two copies to the District Director or his or her designee.

(2) Such a report shall be made by the president or other chief executive officer of the savings association.

(3) Such a report shall be filed within 15 days after the person making it learns of the change in control or the activity which necessitates filing the report, except that a report required under paragraph (b) of this section shall be filed within 15 days after the effective date of the change or replacement of the chief executive officer or director, or within 15 days after the officer making the report obtains knowledge of the change or replacement, whichever occurs later.

(d) Other reports. The Office may also require savings associations and individuals or other persons who have or have had any connection with the management of any savings association, including any present or former director, officer, controlling person, or agent of a savings association, to provide such periodic or other reports as it may

determine to be necessary or appropriate for protection of investors or the Office.

#### § 563.190 Bonds for directors, officers, employees, and agents; form of and amount of bonds.

(a) Each savings association shall maintain bond coverage with a bonding company acceptable to the Office, using the standards set out in § 571.14 of this subchapter, in the form known as Standard Form No. 22 or its equivalent. The bond shall cover each director, officer, employee and agent who has control over or access to cash or securities of such savings association. Such coverage shall be maintained in the minimum amount set forth below, computed on a base consisting of the total assets of the savings association plus the unpaid balance of loans which it has contracted to service for others. The savings association's board of directors must specifically approve any riders to Standard Form 22 and the approval of any rider must be set forth in the minutes of the meeting at which the board of directors approves that rider.

Base	Minimum bond		
Not over \$300,000	\$15,000 plus \$7,500 for each \$100,000 or fraction thereof over \$100,000.		
\$300,001 to \$1,000,000			
\$1,000,001 to \$10,000,000.	\$150,000 plus \$30,000 for each \$1,000,000 or fraction thereof over \$2,000,000.		
\$10,000,001 to \$230,000,000.	\$450,000 plus \$60,000 for each \$5,000,000 or fraction thereof over \$15,000,000.		
\$30,000,001 to \$60,000,000.	\$705,000 plus \$75,000 for each \$10,000,000 or fraction thereof over \$40,000,000.		
\$60,000,001 to \$100,000,000.	\$945,000 plus \$90,000 for each \$15,000,000 or fraction thereof over \$70,000,000.		
\$100,000,001 and over	\$1,230,000 plus \$105,000 for each \$25,000,000 or fraction thereof over \$125,000,000.		

(b) No savings association shall be required to maintain such bond coverage in an amount greater than \$3,000,000. Such bond coverage may provide for a deductible amount from any loss which otherwise would be recoverable from the bonding company. A deductible amount may be applied separately to one or more insuring agreements. The bond shall not provide for more than one deductible amount from all losses caused by the same

person or caused by the same persons acting in collusion or combination in cases in which such losses result from dishonesty of employees (as defined in the bond). A deductible shall not exceed an amount determined according to the following schedule:

Base	Permissible deductible	
\$75,000,000 and under \$75,000,001 to \$250,000,000. Over \$250,000,000	\$25,000 plus .0005 of base over \$25 million.	

(c) If the accounting records of a savings association are maintained and serviced by a data processing organization, that organization, while performing such data processing services, must be covered as an employee under the savings association's bond.

(d) A service corporation of a savings association shall maintain such bond coverages as may be appropriate considering the nature of its activities and the practice of other corporations engaged in similar activities.

## § 563.191 Bonds for agents.

In lieu of the bond provided in § 563.190 of this part in the case of agents appointed by a savings association, a fidelity bond may be provided in an amount at least twice the average monthly collections of such agents, provided such agents shall be required to make settlement with the savings association at least monthly, and provided such bond is approved by the board of directors of the savings association. No bond need be obtained for any agent that is a financial institution insured by the Federal Deposit Insurance Corporation.

# § 563.192 Safe deposit business.

The bond or bonds required by this section shall protect the savings association with respect to the operation of any safe deposit business transacted by such savings association. Each such savings association shall either:

(a) Validly limit the replacement or loss value of the contents of each box to an amount not more than \$1,000 or

(b) Carry additional insurance of a type protecting the savings association against any and all legal liabilities arising out of the rental of safe deposit boxes in minimum amounts as follows: \$25,000 for any number of boxes up to 100, plus \$1,000 for each additional 20 boxes, or fraction thereof, available for rent, up to a maximum coverage of \$100,000; and shall not contractually

incur liabilities beyond the general liabilities incident to the conduct of such business.

## Subpart H-Accounting

# § 563.231 Premiums and discounts with respect to loans.

(a) Purchase at a premium. A premium paid by a savings association in connection with the acquisition of a loan shall be accounted for in accordance with generally accepted accounting principles.

(b) Purchase at a discount. If a savings association purchases a loan at discount, the discount shall be differed by a credit to an account descriptive of deferred income and shall thereafter be credited to income in accordance with generally accepted accounting principles.

## § 563.232 [Reserved]

# § 563.233 Accounting principles and procedures.

For purposes of examination by and reports to the Office and of compliance with this subchapter, each savings association and service corporation shall:

(a) Employ such specific principles or procedures on particular accounting or reporting matters as the Office may require by regulation or otherwise; and

(b) Prepare and maintain such books and records as will support its financial statements and reports to the Office and readily permit reconciliation of such statements and reports with its books

and records; and

(c) By no later than the period beginning on or after January 1, 1989, all unaudited financial statements and financial reports to the Office shall be prepared on the basis of generally accepted accounting principles, except that loan losses and gains deferred pursuant to § 563c.14 of this subchapter may be included on such financial statements and reports, and investments in shares of open-end management companies, as defined in § 566.1(g)(8) of this subchapter, may be carried at historical cost in such statements and reports. All such financial statements and reports shall include a full and fair disclosure of the reconciliation of modified equity capital, as defined in § 567.1(a) of this subchapter, to regulatory capital, as defined in § 567.1 of this subchapter. Loan losses and gains deferred pursuant to § 563c.14 of this subchapter, and investments in shares of open-end management investment companies, as defined in § 566.1(g)(8) of this subchapter, accounted for at historical cost, may be reported on such financial statements

and reports only for and until the last reporting period of 1993.

(d) By no later than the period beginning on or after January 1, 1989, Statements of Condition shall be prepared on the basis of generally accepted accounting principles, except that loan losses and gains deferred pursuant to § 563c.14 of this subchapter may be included on such Statements of Condition, and investments in shares of open-end management companies, as defined in § 566.1(g)(8) of this subchapter, may be carried at historical cost on such Statements of Condition. All such Statements of Condition shall include a full and fair disclosure of the reconciliation of modified equity capital, as defined in § 567.1(a) of this subchapter with regulatory capital, as defined in § 567.1 of this subchapter. Loan gains and losses deferred pursuant to § 563c.14 of this subchapter, and investments in shares of open-end management companies, as defined in § 566.1(g)(8) of this subchapter, accounted for at historical cost, may be reported only for and until the last period of 1993. Each statement of condition shall include in bold type in the body of the statement the following language: "Federal Deposit Insurance Corporation" ("FDIC"), an agency of the U.S. government, insures all depositors up to \$100,000 in accordance with the rules and the regulations of the FDIC." In addition, the footnote reconciliation of equity capital to regulatory capital contained in such statements shall include the following language: "Regulatory capital is the basis by which the Office determines whether a savings association is insolvent and whether a savings association is meeting its regulatory capital requirement."

(e)(1) A savings association seeking to delay its compliance with the uniform accounting standards set forth in this \$ 563.233 or \$ 567.1 of this subchapter shall file a plan with its District

Director.

(2) The plan shall set forth the following:

(i) The specific components of the uniform accounting standards with which the savings association is unable to comply ("excepted components");

(ii) A timetable setting forth the date, in no event later than December 31, 1993, by which the savings association proposes to comply with each excepted

component; and

(iii) Any other information that the savings association believes is relevant to its determination that it is not feasible for the savings association to comply with each excepted component.

- (3)(i) The District Director shall act on such plans in accordance with the guidelines set forth at § 571.12 of this subchapter.
- (ii) In reviewing a plan, the District Director shall consider all relevant information, including, but not limited to.
- (A) The savings association's plan submitted pursuant to this section;
- (B) Other information available to the District Director regarding the savings association;
- (C) The ability of other savings associations in the region to comply with the uniform accounting standards; and
- (D) The extent to which any relevant grandfathering or phase-in of the uniform accounting standards affects any excepted component in the savings association's plan.
- (4) In the event that the District Director disapproves a plan for delayed compliance in whole or in part, the savings association may appeal the disapproval to the Office within thirty days of the disapproval. The Office shall act on such appeal in accordance with the guidelines set forth at § 571.12 of this subchapter. The Office, in reviewing the disapproval, shall take into consideration all relevant factors, including those listed in paragraph (e) of this section.

# § 563.234 Accounting for troubled debt restructuring.

- (a) If a savings association engages in troubled debt restructuring with respect to any loan by the savings association and the troubled debt restructuring complies with Statement of Financial Accounting Standards Numbered 5 and Statement of Financial Accounting Standards Numbered 15 (as issued by the Financial Accounting Standards Board), the savings association shall account for the effects of the troubled debt restructuring and its investment in the original debt instrument (or other agreement that is subject to such restructuring) in the manner provided in those statements and in a manner consistent with the AICPA Industry Guide for Savings and Loan Associations. Guidelines for use by savings associations in accounting for troubled debt restructurings are set forth in § 571.18 of this subchapter.
- (b) Savings associations shall report restructured loans in all monthly and quarterly reports to the Office.

## PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

563b.1 Scope of part.

563b.2 Definitions.

# Subpart A-Standard Conversions

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#### Subpart B-[Reserved]

#### Subpart C-Voluntary Supervisory Stock Conversions

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#### Subpart E-Forms

563b.100 Form AC-Application for Conversion.

563b.101 Form PS-Proxy Statements. 563b.102 Form OC—Offering Circulars.

Authority: Secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); secs. 3,

12-14, 23, 48 Stat. 882, 892, 894-895, 901, as amended (15 U.S.C. 78c, 1-n, w).

#### § 563b.1 Scope of part.

(a) General. Except as the Office may otherwise determine, the provisions of this part shall exclusively govern the conversion of mutual savings associations to capital stock associations, and no mutual savings association shall convert to the capital stock form without the prior written consent of the Office. The Office may grant a waiver in writing from any requirement of this part for good cause

(b) Provisions of prescribed forms. Any provision in a form prescribed under this part and covering the same subject matter as any provision of this part shall have the same force and effect as if it were a provision of this part except as it relates to information not

deemed material. (c) Conflicts with State law. (1) In the event an applicant finds that compliance with any provision of this part would be in conflict with applicable State law, the applicant may file a written request for waiver of compliance with such provision by the Office. Such request may be incorporated in the application for conversion; otherwise, the applicant shall file four copies of such request.

(2) In making any such request, the

applicant shall:

(i) Specify the provision or provisions of this part with respect to which the applicant desires waiver;

(ii) Furnish an opinion of counsel demonstrating that applicable State law is in conflict with the specified provision or provisions of this part; and

(iii) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its account holders or other savings associations or be contrary to the public interest.

## § 563b.2 Definitions.

(a) As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(1) Acting in concert. The term "acting in concert" shall be defined as provided

in § 574.2(c).

(2) Affiliate. An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) Amount. The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if

relating to shares, and the number of units if relating to any other kind of security.

(4) Applicant. An "applicant" is a savings association which has applied to convert pursuant to this part.

(5) Associate. The term "associate", when used to indicate a relationship with any person, means:

(i) Any corporation or organization (other than the applicant or a majorityowned subsidiary of the applicant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities,

(ii) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, except that, for the purposes of § 563b.3 (c)(6), (c)(7), (c)(9), and (d)(4), it does not include any tax-qualified employee stock benefit plan or non-taxqualified employee stock benefit plan in which a person has a substantial beneficial interest or serves as a trustee or in a similar fiduciary capacity, and that, for the purposes of \$ 563b.3(c)(8), it does not include any tax-qualified employee stock benefit plan, and

(iii) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the applicant or any of its parents or

subsidiaries.

(6) Association members. The term "association members" refers to persons who, pursuant to the charter or bylaws of the applicant, are eligible to vote at the applicant's meeting at which conversion will be voted upon.

(7) BIF. The term "BIF" means the Bank Insurance Fund, as established by the Federal Deposit Insurance Act, 12

U.S.C. 1811 et seq.

(8) Broker. The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(9) Capital stock. The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.

(10) Charter. The term "charter" includes articles of incorporation, articles of association, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(11) Control. The term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession,

directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(12) Dealer. The term "dealer" means any person who engages either for all or part of his or her time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) Director. The term "director" means any director of a corporation or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(14) District Director. The term "District Director" means the senior representative of the Director of the Office of Thrift Supervision for all matters dealing with examination and supervision of savings associations in the district in which the converting savings association has its principal office.

(15) Eligibility record date. The term "eligibility record date" means the record date for determining eligible account holders of a converting association.

(16) Eligible account holder. The term "eligible account holder" means any person holding a qualifying deposit as determined in accordance with \$ 563b.3(e).

(17) Employee. The term "employee" does not include a director or officer.

(18) Equity security. The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such security; or any such warrant or right.

(19) FDIC. The term "FDIC" means the Federal Deposit Insurance Corporation, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 et sea.

Insurance Act, 12 U.S.C. 1811 et seq. (20) Market Maker. The term "market maker" means a dealer who, with respect to a particular security:

(i) Regularly publishes bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system; or

(ii) Furnishes bona fide competitive
 bid and offer quotations on request; and

(iii) Is ready, willing and able to effect transactions in reasonable quantities at his or her quoted prices with other brokers or dealers.

(21) Material. The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity

security of the applicant, or matters as to which an average prudent association member ought reasonably to be informed in voting upon the plan of conversion of the applicant.

(22) Member. The term "member" means any person qualifying as a member of a savings association pursuant to its charter or bylaws.

(23) Offer. The term "offer", "offer to sell", or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(24) Office. The term "Office" means the Office of Thrift Supervision.

(25) Officer. The term "officer" means the chairman of the board, president, vice-president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(26) Person. The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(27) Proxy. The term "proxy" includes every form of authorization by which a person is, or may be deemed to be, designated to act for an association member in the exercise of his or her voting rights in the affairs of a savings association. Such an authorization may take the form of failure to dissent or object.

(28) Purchase. The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(29) SAIF. The term "SAIF" means the Savings Association Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq.

(30) Sale. The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but such terms do not include an exchange of securities in connection with a merger or acquisition approved by the Office.

(31) Savings account. The term
"savings account" has the same
meaning as in part 561 of this
subchapter and includes certificates of
deposit.

(32) Savings association. The term "savings association" has the same

meaning as in part 561 of this subchapter.

(33) Security. The term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing.

(34) Solicitation; solicit. The terms "solicitation" and "solicit" refer to:

 (i) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(ii) Any request to execute, not execute, or revoke a proxy; or

(iii) The furnishing of a form of proxy or other communication to association members under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

The terms do not apply, however, to the furnishing of a form of proxy to an association member upon the unsolicited request of such association member, the performance of acts required by § 563b.5(f), or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

(35) Subscription offering. The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to:

(i) Eligible account holders as required by § 563b.3(c)(2);

(ii) Supplemental eligible account holders as required by § 563b.3(c)(4);

(iii) Members entitled to vote at the meeting called to consider the conversion as required by § 563b.3(c)(5);

(iv) Directors, officers and employees, as permitted by § 563b.3(d)(2); and

(v) Eligible account holders, supplemental eligible account holders, and voting members as permitted by \$ 563b.3(d)(3).

(36) Subsidiary. A "subsidiary" of a specified person is an affiliate controlled by such person, directly or indirectly through one or more intermediaries.

(37) Supplemental eligibility record date. The term "supplemental eligibility record date" means the supplemental record date for determining supplemental eligible account holders of a converting association required by § 563b.3(c)(4). The date shall be the last day of the calendar quarter preceding the Office's approval of the application for conversion.

(38) Supplemental eligible account holder. The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors and their associates, as of the supplemental eligibility record

(39) Tax-qualified employee stock benefit plan. A "tax-qualified employee stock benefit plan" is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan or other plan, which, with its related trust, meets the requirements to be "qualified" under section 401 of the Internal Revenue Code. A "non-tax-qualified employee stock benefit plan" is any defined benefit plan or defined contribution plan which is not so qualified.

(40) Underwriter. The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which he or she is the underwriter.

(b) Terms defined in other parts of this subchapter, when used in this part, shall have the meanings given in such definitions, to the extent such definitions are not inconsistent with the definitions contained in this part, unless the context otherwise requires.

#### Subpart A-Standard Conversions

#### § 563b.3 General principles for conversions.

(a) Applicability of subpart. The provisions of this subpart shall govern conversions undertaken pursuant to any other subpart of this part unless clearly inapplicable.

(b) General requirements. No application for conversion shall be

approved by the Office if:

(1) The plan of conversion adopted by the applicant's board of directors is not in accordance with the provisions of this

(2) The conversion would cause the applicant to fail to meet any regulatory capital requirement of § 567.2 of this subchapter;

(3) The conversion may result in a taxable reorganization of the applicant under the Internal Revenue Code of 1986, as amended; or

(4) The converted association would not have its accounts insured by the

(c) Required provisions in plan of conversion. The plan of conversion shall

(1) Provide that the converting savings association shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of such stock in the converted savings association, based on an independent valuation, as provided in § 563b.7.

(2) Provide that each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting savings association.

(i) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(2), shares shall be allocated among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his or her total allocation equal to 100 shares.

(ii) Any shares not allocated in accordance with paragraph (c)(2)(i) of this section shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan

of conversion.

(3) Nontransferable subscription rights to purchase capital stock received by officers and directors and their associates of the converting savings association based on their increased deposits in the converting association in the one year period preceding the eligibility record date shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares pursuant to paragraph (c)(2) of this section.

(4) Provide that, in plans involving an eligibility record date that is more than

15 months prior to the date of the latest amendment to the application for conversion filed prior to the Office's approval, a supplemental eligibility record date be determined whereby each supplemental eligible account holder of the converting association shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section, one-tenth of one percent of the total offering of shares, or 15 times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting savings association on the supplemental eligibility record date.

(i) Subscription rights received pursuant to this paragraph (c)(4) shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to paragraphs (c)(2) and

(c)(3) of this section.

(ii) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with paragraph (c)(2) of this section shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this paragraph (c)(4) of this section.

(iii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(4), shares shall be allocated among the subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make his or her total allocation (including the number of shares, if any, allocated in accordance with paragraph (c)(2) of this section) equal to 100 shares.

(iv) Any shares not allocated in accordance with paragraph (c)(4)(iii) of this section shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

(5) Provide that association voting members who are not either eligible account holders or supplemental eligible account holders shall receive, without payment, nontransferable subscription rights to purchase capital stock in an

amount equal to the greater of the maximum purchase limitation established for the public offering or the direct community offering pursuant to paragraph (c)(6) or (d)(4) of this section. or one-tenth of one percent of the total offering of shares.

(i) Subscription rights received pursuant to this paragraph (c)(5)shall be subordinated to all rights received by eligible account holders and supplemental account holders to purchase shares pursuant to paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(ii) In the event of an oversubscription to capital stock pursuant to this paragraph (c)(5), shares shall be allocated among the subscribing voting members on such equitable basis as may be provided in the plan of

conversion.

(6) Provide that any shares of the converting savings association not sold to persons with subscription rights shall be sold either in a public offering through an underwriter or directly by the converting savings association in a direct community offering, subject to the applicant demonstrating to the Office the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. Such conditions shall include, but not be

(i) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, a condition limiting purchases in the public offering or the direct community offering by any person together with any associate or group of persons acting in concert to not more than five percent (5%) of the total offering of shares, except that any one or more taxqualified employee stock benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares and shall be entitled to purchase such amount regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified or non-taxqualified employee stock benefit plans and attributed to a person shall not be aggregated with other shares purchased directly by or otherwise attributable to that person.

(ii) A condition requiring that orders for stock in any public offering or direct community offering shall first be filled up to a maximum of two percent of the conversion stock and thereafter remaining shares shall be allocated on an equal number of shares per order basis until all orders have been filled.

(iii) A condition requiring the stock to be offered and sold in the public offering or the direct community offering to be offered and sold in a manner that will

achieve the widest distribution of the

(iv) A condition that any direct community offering by the converting savings association shall give a preference to natural persons residing in the counties in which the association

(7) Subject to the adoption in the plan of conversion of the optional provision of paragraph (d)(4) of this section, provide that the total of shares which any person and any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent (5%) of the total offering of shares. except that any one or more taxqualified employee stock benefit plans may purchase in the aggregate not more than ten percent (10%) of the total offering of shares, and shall be entitled to purchase this quantity regardless of the number of shares to be purchased by other parties, and that shares held by one or more tax-qualified or nonqualified employee stock benefit plans and attributed to a person shall not be aggregated with shares purchased directly by or otherwise attributable to

that person.

(8) Provide that the officers and directors of the converting association and their associates may purchase in the conversion, up to thirty-five percent (35%) of the total offering of shares of the converting association provided that the converting association has less than \$50 million in total assets, and up to twenty-five percent (25%) in the total offering of shares if the converting association has more than \$500 million in total assets. If the converting association has between \$50 million and \$500 million, in total essets, the maximum percentage shall be equal to thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of the total assets less \$50 million divided by \$45 million. For example, for a converting association with \$275 million in total assets, the percentage will be thirty percent (30%), calculated as thirty-five percent (35%) minus one percent (1%) multiplied by the quotient of \$275 million less \$50 million, or \$225 million, divided by \$45 million, which equals five, or five percent (5%), which when subtracted leaves a difference of thirty percent (30%). In calculating the number of shares which may be purchased, any shares attributable to the officers and directors and their associates but held by one or more taxqualified employee stock benefit plans shall not be included. In the case of merger conversions undertaken pursuant to § 563b.10(c), any shares owned prior to the merger conversion by

officers, directors, and their associates shall not be included in calculating the aggregate amount which may be purchased by such persons.

(9) Provide that an officer or director. or his or her associates, shall not purchase, without the prior written approval of the Office, the capital stock of the converted savings association except from a broker or dealer registered with the Securities and Exchange Commission, for a period of three years following the date of the conversion; except that, this paragraph (c)(9) shall not apply to:

(i) Negotiated transactions involving more than one percent (1%) of the outstanding capital stock of the converted savings association; or

(ii) Purchases of stock made by and held by any one or more tax-qualified or non-tax-qualified employee stock benefit plan which may be attributable to individual officers or directors.

(10) Provide that the sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with § 563b.7 of this part; and specify the underwriting and/or other marketing arrangements to be made to ensure the sale of all shares not sold to persons with subscription

(11) Establish a time period within which the conversion must be completed prior to termination. The time period shall be not more than 24 months from the date the association members approve the plan of conversion and shall not be extended by the converting savings association or the Office.

(12) Provide that each savings account holder of the converting savings association shall receive, without payment, a withdrawable savings account or accounts in the converted savings association equal in withdrawable amount to the withdrawal value of such account holder's savings account or accounts in the converting

savings association.

(13) Provide for the establishment and maintenance of a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings association, in accordance with the provisions of paragraph (f) of this section. An association converting to a federally chartered stock savings and loan association or savings bank shall include in its charter the following

Liquidation account. Pursuant to the requirements of the Office's regulations (12 CFR Subchapter D) the association shall establish and maintain a liquidation account

for the benefit of its savings account holders \_ ("eligible savers"). In the event of a complete liquidation of the association, it shall comply with such regulations with respect to the amount and the priorities on liquidation of each of the association's eligible savers' inchoate interest in the liquidation account, to the extent it is still in existence: Provided, That an eligible saver's inchoate interest in the liquidation account shall not entitle such eligible saver to any voting rights at meetings of the association's stockholders.

(14) Provide for an eligibility record date, which shall be not less than 90 days prior to the date of adoption of the plan by the converting savings association's board of directors.

(15) Provide that the holders of the capital stock of the converted savings association shall have exclusive voting rights, unless in the case of a Statechartered converted savings association State law requires savings account holders and/or borrowers of the converted savings association to have voting rights, in which case the charter of the converted savings association shall:

(i) Limit such voting rights to the minimum required by State law, and

(ii) Provide for the management of the converted savings association to solicit proxies from such savings account holders and/or borrowers in the same manner as it solicits proxies from its shareholders.

(16) Provide that the plan of conversion adopted by the applicant's board of directors may be substantively amended by such board of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from members to vote on the plan and at any time thereafter with the concurrence of the Office; and that the conversion may be terminated by such board of directors at any time prior to the meeting of members called to consider the plan of conversion and at any time thereafter with the concurrence of the Office.

(17) Provide that all shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the savings association (by subscription or otherwise) or from an underwriter shall be subject to the restriction that the shares shall not be sold for a period of not less than one year following the date of purchase, except in the event of death of the director or officer.

(18) Provide that, in connection with shares of capital stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the transfer agent for the converted savings association's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(iii) Any shares issued as a stock dividend, stock split or otherwise with respect to any such restricted stock shall be subject to the same restrictions as may apply to such restricted stock.

(19) Provide that the converting

savings association shall:

(i) Promptly following the conversion register the securities issued in connection therewith pursuant to the Securities Exchange Act of 1934 and undertake not to deregister such securities for a period of three years

(ii) Use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities issued in connection with the conversion; and

(iii) Use its best efforts to list those shares issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system.

(20) Provide that the expenses incurred in the conversion shall be

reasonable.

(21) Contain no provision which the Office shall determine to be inequitable or detrimental to the applicant, its savings account holders or other savings associations or to be contrary to the public interest.

(22) Provide that the converting savings association shall not loan funds or otherwise extend credit to any person to purchase the capital stock of the

association.

(23) Provide that a tax-qualified employee stock benefit plan has a priority to purchase conversion stock prior to eligible and supplemental accountholders and voting members who have subscription rights.

(24) Provide that the association may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the association to fail to meet its regulatory capital requirement.

(d) Optional provisions in plan of conversion. The plan of conversion may provide any or all of the following: (1) That the converting savings

association may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing to association members pursuant to § 563b.6(c) of this

part of the proxy statement authorized for use by the Office. The subscription offering may be closed before the meeting of the association members held to vote on the plan of conversion, provided that the offer and sale of the capital stock shall be conditioned upon the approval of the plan of conversion by the association members as provided in § 563b.6.

(2) That directors, officers and employees of the converting savings association shall receive without payment nontransferable subscription rights to purchase shares of capital stock that are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, voting members, and taxqualified employee stock benefit plans provided for under paragraphs (c)(2), (c)(4), (c)(5), and (c)(23) of this section, subject to the following conditions:

(i) The total number of shares which may be purchased under this paragraph (d)(2) shall not exceed 25 percent of the total number of shares to be issued in the case of a converting savings association with total assets of less than \$50 million or 15 percent in the case of a converting savings association with total assets of \$500 million or more; in the case of a converting savings association with total assets of \$50 million or more but less than \$500 million, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, 20 percent in the case of a converting savings association with total assets of approximately \$275 million); and

(ii) The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to period of service, compensation and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person associate thereof, or group of affiliated persons or group of persons otherwise acting in concert.

(3) That any account holder receiving rights to purchase stock in the subscription offering, shall also receive, without payment, non-transferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that such shares are available after satisfying the subscriptions provided for under paragraphs (c)(2), (c)(4), (c)(5), and (c)(23) of this section, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for such additional shares, the shares available shall be allocated among the subscribing eligible

account holders, supplemental eligible account holders and voting members on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible such subscriptions shall be allocated in such a manner that total purchases by eligible account holders, supplemental eligible account holders, and voting members shall be rounded to the nearest 100 shares.

(4) That purchases in the public offering or in the direct community offering by any person together with any associate or group of persons acting in concert shall be limited to less than ten percent (10%) of the total offering of shares, provided that orders for conversion stock exceeding five percent (5%) of the total offering of shares shall not exceed in the aggregate ten percent (10%) of the total offering of shares, except that tax-qualified employee stock benefit plans may purchase in the aggregate up to ten percent (10%) of the total offering and not be included in the order limit.

(5) That the converting savings association may require association members to return by a reasonable date certain a postage-paid written communication provided by the converting savings association requesting receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(11) of this section, in order to be entitled to receive an offering circular from the converting savings association: Provided, That the subscription offering or the offering pursuant to paragraph (d)(11) of this section shall not be closed until the expiration of thirty days after the mailing by the converting savings association to association members of the postage-paid written communication. If the subscription offering or the offering pursuant to paragraph (d)(11) of this section is not commenced within 45 days after the meeting of association members, the converting savings association that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(11) of this section to each association member who had been furnished with proxy soliciting materials, written notice of the commencement of the offering, which notice shall state that the converting savings association is not required to furnish an offering circular to an association member unless the association member returns by a

reasonable date certain the postage-paid written communication provided by the converting savings association requesting receipt of an offering circular.

(6) That the converting savings association may require eligible account holders and supplemental eligible account holders who are not voting members pursuant to § 563b.6(d) of this part to return by a reasonable date certain a postage-paid written communication provided by the converting savings association requesting the receipt of a subscription offering circular, or a preliminary or final offering circular in an offering pursuant to paragraph (d)(11) of this section, in order to be entitled to receive an offering circular from the converting savings association: Provided, That the subscription offering or the offering pursuant to paragraph (d)(11) of this section shall not be closed until the expiration of thirty days after the mailing by the converting savings association to the non-voting eligible account holders and supplemental eligible account holders of the postagepaid written communication. If the subscription offering or the offering pursuant to paragraph (d)(11) of this section is not commenced within 45 days after the meeting of association members, the converting savings association that has adopted this optional provision shall transmit no more than 30 days prior to the commencement of the subscription offering or the offering pursuant to paragraph (d)(11) of this section to each eligible account holder and supplemental account holder who had been furnished with a notice pursuant to paragraph (d)(11) of this section written notice of the commencement of the offering, which notice shall state that the converting savings association is not required to furnish an offering circular to a non-voting eligible account holder or supplemental eligible account holder unless the eligible account holder or supplemental eligible account holder returns by a reasonable date certain the postage-paid written communication provided by the converting savings association requesting receipt of an offering circular.

(7) That any insignificant residue of shares of the converting savings association not sold in the subscription offering or in a public offering referred to in paragraph (c)(6) of this section may be sold in such other manner as provided in the plan with the Office's approval.

(8) That the number of shares which any person, or group of persons affiliated with each other or otherwise acting in concert, may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of shares.

(9) That any person exercising subscription rights to purchase capital stock shall be required to purchase a minimum of up to 25 shares to the extent such shares are available (but the aggregate price for any minimum share purchase shall not exceed \$500).

(10) That the converted savings association shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in the provisions of this part to capital stock shall apply to such units of equity securities unless the context otherwise

requires.

11) That, instead of a separate subscription offering, all subscription rights issued in connection with the conversion shall be exercisable by delivery of properly completed and executed order forms to the underwriters or selling group for the public offering or pursuant to any other procedure, subject to the applicant demonstrating to the Office the feasibility of the method of exercising such rights and to such conditions as shall be provided in the plan of conversion. Such conditions shall include, but not be limited to, a condition requiring that orders for stock in the public offering or direct community offering shall first be filled, in the order of priority set forth in this section, by orders of persons exercising subscription rights.

(12) That the Office may approve such other equitable provisions as are necessary to avert imminent injury to the converting savings association.

(e) Determination of amount of qualifying deposit; predecessor and successor accounts. (1) Unless otherwise provided in the plan of conversion, for the purposes of this section, the amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's savings accounts in the converting savings association as of the close of business on the eligibility record date or supplemental eligibility record date. However, the plan of conversion may provide that any savings accounts with total deposit balances of less than \$50 (or any lesser amount) shall not constitute a qualifying deposit.

(2) As used in this section, the term "savings account" includes a predecessor or successor account of a given savings account which is held only in the same right and capacity and on the same terms and conditions as the given savings account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account.

(f) Liquidation account. (1) Each converted savings association shall, at the time of conversion, establish a liquidation account in an amount equal to the amount of regulatory capital of the converting savings association as of the latest practicable date prior to conversion. For the purposes of this paragraph, the savings association shall use the regulatory capital figure no later than that set forth in its latest statement of financial condition contained in the final offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in paragraph (g)(2) of this section, the existence of the liquidation account shall not operate to restrict the use or application of any of the regulatory capital accounts of the converted savings association.

(2) The liquidation account shall be maintained by the converted savings association for the benefit of eligible account holders and supplemental eligible account holders who maintain their savings accounts in such association. Each such eligible account holder and supplemental eligible account holder shall, with respect to each savings account held, have a related inchoate interest in a portion of the liquidation account balance

("subaccount").

(3) In the event of a complete liquidation of the converted savings association (and only in such event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts held, before any liquidation distribution may be made with respect to capital at the time of the conversion in exchange for the surrender of mutual capital certificates issued by the association prior to conversion. A merger, consolidation, sale of bulk assets, or similar combination or transaction with another SAIF-insured savings association is not considered a complete liquidation for these purposes, and in such a transaction the liquidation account would be assumed by the surviving association. Preferred stock issued in exchange for mutual capital certificates may receive distributions in liquidation

prior to distribution from the liquidation account to the holders of the mutual capital certificates that would have been entitled to priority over the residual rights of depositors had the association not been converted as of the date of liquidation.

(4) The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in such savings account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings association on such dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in such saving accounts on such record dates. Such initial subaccount balances shall not be increased, and it shall be subject to downward adjustment as provided in paragraph (f)(5) of this section.

(5) If the deposit balance in any savings account of an eligible account holder or supplemental eligible account holder at the close of business on any annual closing date subsequent to the respective record dates is less than the

lesser of:

(i) The deposit balance in such savings account at the close of business on any other annual closing date subsequent to the eligibility record date or supplemental eligibility record date; or

(ii) The amount of qualifying deposit as of the eligibility record date or the supplemental eligibility record date, the subaccount balance for such savings account shall be adjusted by reducing such subaccount balance in an amount proportionate to the reduction in such deposit balance.

In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. The converted association shall not be required to recompute the liquidation account and subaccount balances provided the converted association maintains records sufficient to make necessary computations in the event of a complete liquidation or such other events as may require a computation of the balance of the liquidation account. The liquidation subaccount of an account holder shall

be maintained for as long as the account holder maintains an account with the same Social Security number.

(g) Restrictions on repurchase of stock and payment of dividends. Each savings association that converts pursuant to this part shall be subject to the following conditions:

(1) No converted savings association shall for a period of three years from the date of the completion of the conversion repurchase any of its capital stock from any person, except that this restriction shall not apply to either:

(i) A repurchase, on a pro rata basis pursuant to an offer approved by the Office and made to all shareholders of

such association;

(ii) The repurchase of qualifying shares of a director; or

(iii) A purchase in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan in an amount reasonable and appropriate to fund the plan.

(2) No converted savings association shall declare or pay a cash dividend on, or repurchase any of, its capital stock if the effect thereof would cause the regulatory capital of the converted savings association to be reduced below: (i) The amount required for the liquidation account; or (ii) The regulatory capital requirements contained in § 567.2 of this subchapter.

(3) Without the prior approval of the Office, no converted savings association shall, for a period of three years after the date of its conversion, declare or pay a cash dividend on, or repurchase any of, its capital stock in an amount in excess of one half of the greater of:

(i) The association's net income (as defined in § 563c.12 of this subchapter)

for the current fiscal year; or

(ii) The average of the association's net income (as so defined) for the current fiscal year and not more than two of the immediately preceding fiscal years.

(4) Preapproval of Certain Repurchases of Stock. A converted savings association subject to paragraph (g)(1) of this section may repurchase its

captial stock provided:

(i) The repurchases are part of an open-market stock repurchase program that does not involve greater than 5% of the association's outstanding capital stock during a six-month period;

(ii) The repurchases do not reduce the association's ratio of regulatory capital (as defined in 12 CFR 567.1) to total liabilities below 6%; and

(iii) The association provides to the District Director and to the Chief Counsel's Office, Corporate and Securities Division, no later than 10 days prior to the commencement of a repurchase program, written notice containing a full description of the repurchase program to be undertaken and the effect of such repurchases on its regulatory capital position, and the District Director does not disapprove the repurchase program based upon a determination that:

(A) The repurchase program would adversely affect the financial condition

of the savings association; or

(B) The information submitted by the savings association is insufficient upon which to base a conclusion as to whether the association's financial condition would be adversely affected.

(h) Manipulative and deceptive devices. In the offer, sale or purchase of securities issued incident to its conversion, no savings association, or any director, officer, attorney agent or employee thereof, shall:

(1) Employ any device, scheme, or

artifice to defraud:

(2) Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(i) Acquisition of the securities of converting and converted savings associations-(1) Prohibited transfers. Prior to the completion of a conversion, no person shall transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of conversion subscription rights, or the underlying securities to the

account of another.

(2) Prohibition of offers and certain acquisitions. Prior to the completion of a conversion, no person shall make any offer, or any announcement of an offer, for any security of the converting savings association issued in connection with the conversion nor shall any person knowingly acquire securities of the converted savings association issued in connection with the conversion in excess of the maximum purchase limitations established in the association's approved plan of conversion pursuant to paragraph (c)(7) or (d)(4) of this section.

(3) Prohibition on offers to acquire and acquisitions of stock for three years following conversion. (i) For a period of three years following the date of the completion of the conversion, no person shall directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of

any class of an equity security of a savings association converted in accordance with the provisions of this Part 563b, without the prior written approval of the Office. Where any person, directly or indirectly, acquires beneficial ownership of more than ten percent of any class of any equity security of a savings association converted in accordance with part 563b, without the prior written approval of the Office as required by this section, the securities beneficially owned by such person in excess of ten percent shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matter submitted to the stockholders for a vote. For the purposes of this section, a person shall be deemed to have acquired beneficial ownership of more than ten percent (10%) of a class of equity security of a savings association where the person holds any combination of stock or revocable or irrevocable proxies of the association under circumstances that give rise to a conclusive control determination or rebuttable control determination under § 574.4 (a) and (b) of this chapter. The original and one copy of all applications for approval of the Office under this paragraph should be filed with the Chief Counsel's Office, Corporate and Securities Division, and one copy of all such applications should be filed with the District Director.

(ii) A conversion shall be deemed completed on the date all of the converting association's conversion

stock was sold.

(iii) An acquisition of shares shall be presumed to have been made if the acquiror entered into a binding written agreement for the transfer of shares. An offer shall be deemed made when communicated.

(4) Exceptions. (i) Paragraphs (i)(1) and (i)(2) of this section shall not apply to a transfer, agreement, or understanding to transfer, offer, or announcement of an offer or intent to make an offer which:

(A) Pertains only to securities to be purchased pursuant to paragraph (c)(6).

(d)(7), or (d)(12); and

(B) Has the prior written approval of

the Office.

(ii) Paragraphs (i)(2) and (i)(3) of this section shall not apply to any offer with a view toward public resale made exclusively to the association or to the underwriters or a selling group acting on

(iii) Unless made applicable by the Office by prior advice in writing, the restriction contained in paragraph (i)(3) of this section shall not apply to any offer or announcement of an offer which if consummated would result in the acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding 12-month period, of not more than one percent of the class of securities.

(iv) The restriction contained in paragraph (i)(3) of this section shall not apply to any offer to acquire or acquisition of beneficial ownership of more than ten percent of the common stock of a savings association by a corporation whose ownership is or will be substantially the same as the ownership of the savings association. provided that the offer or acquisition is made more than one year following the date of completion of the conversion.

(v) Paragraphs (i)(1), (i)(2) and (i)(3) of this section shall not apply to the acquisition of securities of an association or holding company thereof by any one or more tax-qualified employee stock benefit plans of such association or holding company, provided that, the plan or plans do not have beneficial ownership in the aggregate of more than twenty-five percent (25%) of any class of equity security of the converted association or holding company.

(5) Criteria for approval. The Office may deny an application involving an offer or acquisition of any security or proxies to vote securities of a converted association submitted under paragraph (i)(3) of this section if it finds that the

proposed acquisition:

(i) Would frustrate the purposes of the provisions of this Part 563b;

(ii) Would be manipulative or deceptive;

(iii) Would subvert the fairness of the conversion:

(iv) Would be likely to result in injury to the association;

(v) Would not be consistent with economical home financing;

(vi) Would otherwise be violative of law or regulation; or

(vii) Would not contribute to the prudent deployment of the association's

conversion proceeds.

(6) Optional charter provisions. The plan of conversion may provide for the charter of the converted savings association to include, for a specified period of not more than five years following the date of the completion of the conversion, any or all of the provisions of \$ 552.4(b)(8) of this chapter: Provided, that if the savings association is converting to a statechartered stock association, it shall include in its application an opinion of counsel independent of the association that such charter provisions are

permissible under the law of the applicable state. At any annual or special meeting of its shareholders, a converted state-chartered savings association may adopt any charter provision regarding the acquisition by any person or persons of its equity securities that would be permitted to be adopted by a savings association chartered by the state in which the converted savings association is chartered, and a converted federally-chartered savings association may adopt any such charter provision permitted under § 552.4 of this chapter.

(7) Definitions. (i) The term person includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of securities of a savings association.

(ii) The term offer includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security, for value:

Provided, That for the purpose of this § 563b.3(i), the term "offer" shall not include:

(A) Inquiries directed solely to the management of a savings association

and not intended to be communicated to stockholders, designed to elicit an indication of management's receptivity to the basic structure of a potential acquisition with respect to the amount of securities, manner of acquisition and formula for determining price, or

(B) Nonbinding expressions of understanding or letters of intent with the management of a savings association regarding the basic structure of a potential acquisition with respect to the amount of securities, manner of acquisition, and formula for determining price.

(iii) The term acquire includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(iv) The term security includes non-transferable subscription rights issued pursuant to a plan of conversion as well as a security as defined in 15 U.S.C. 78c(2)(10).

(j) Priority of regulations. The provisions of this part shall supersede all inconsistent charter and bylaw provisions of federally-chartered savings associations converting to the stock form.

# § 563b.4 Notice of filing; public statements; confidentiality.

(a) Information prior to approval of plan of conversion. (1) A savings

association which is considering converting pursuant to this part and its directors, officers and employees shall keep such consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the Office may require remedial measures including:

(i) A public statement by the association that its board of directors is currently considering converting

pursuant to this part;

(ii) Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting savings association's board of directors as to assure the equitability of the conversion;

(iii) Limitation of the subscription rights of any person violating or aiding the violation of this section to an amount deemed appropriate by the Office; and

(iv) Any other actions the Office may deem appropriate and necessary to assure the fairness and equitability of the conversion.

(2) If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant.

(3) Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the savings association shall:

(i) Notify its members of such action by publishing a statement in a newspaper having general circulation in each community in which an office of the savings association is located and/ or by mailing a letter to each of its members; and

(ii) Have copies of the adopted plan of conversion available for inspection by its members at each office of the savings association. The savings association may also issue a press release with respect to such action. Copies of the proposed statement, letter and press release are not required to be filed with the Office, but may be submitted for comment to the Chief Counsel's Office, Corporate and Securities Division. Copies of the definitive statement, letter and press release shall be filed with the Office as part of the application for conversion.

(4) The statement, letter and press release, unless otherwise authorized by the Office shall contain only (but need not contain all of) the following:

(i) A statement that the board of directors has adopted a proposed plan to convert the savings association from a Federal (or State, as the case may be) mutual association to a Federal (or State, as the case may be) capital stock savings association;

(ii) A statement that the proposed plan of conversion must be approved by at least a majority of the votes eligible to be cast either in person or by proxy by association members at a meeting at which the plan will be submitted for their approval;

(iii) A statement that existing proxies held with respect to voting rights in the savings association will not be voted regarding the conversion, and that new proxies will be solicited for voting on the proposed plan of conversion;

(iv) A statement that a proxy statement setting forth more detailed information with respect to the proposed plan of conversion will be sent to association members prior to the meeting of members;

(v) A statement that the proposed plan of conversion is subject to approval by the Office and by the appropriate State regulatory authority or authorities (naming such an authority or authorities) before such plan can become effective and that members of the applicant will have an opportunity to file written comments including objections and materials supporting such objections to the Office;

(vi) A statement that the proposed plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(vii) A statement that there is no assurance that the approval of the Office or the approval of any appropriate State authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(viii) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(ix) A brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;

(x) A brief statement as to the extent to which voting members will participate in the conversion;

(xi) A brief description of the proposed plan of conversion;

(xii) The par value (if any) and approximate number of shares of capital stock to be issued and sold under the proposed plan of conversion;

(xiii) A brief statement as to the extent to which directors, officers and

employees will participate in the conversion;

(xiv) A statement that savings account holders will continue to hold accounts in the converted savings association identical as to dollar amount, rate of return and general terms, and that their accounts will continue to be insured by the FDIC:

(xv) A statement that the savings association will continue to be a member of the Federal Home Loan Bank

(xvi) A statement that borrowers' loans will be unaffected by conversion, and that the amount, rate, maturity, security and other conditions will remain contractually fixed as they existed prior to conversion:

(xvii) A statement that the normal business of the savings association in accepting savings and making loans will continue without interruption; that the converted savings association will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff:

(xviii) A statement that the proposed plan of conversion may be substantively amended by the board of directors as a result of comments from the regulatory authorities or otherwise prior to the meeting, and that the proposed plan may also be terminated by the board of directors; and

(xix) A statement that questions of members will be answered in the proxy material to be sent after the regulatory approvals of the proposed plan of conversion have been obtained and that any questions at this time may be answered by telephoning or writing to

the savings association.

(5) Such statement, letter and press release shall not in any manner solicit proxies, include financial statements or describe the benefits of conversion or the value of the capital stock of the savings association upon conversion. In replying to inquiries, the savings association should limit its answers to the matters listed in paragraph (a)(3) of

this section.

(b) Notice of filing. (1) Upon determination that an application for conversion is properly executed and is not materially incomplete, the Office will advise the applicant, in writing, to publish a notice of the filing of the application. Promptly after receipt of the advice, the applicant shall prominently post the notice in each of its offices and publish the notice in a newspaper printed in the English language and having general circulation in each

community in which an office of the applicant is located, as follows:

Notice of Filing of an Application for Conversion To Convert to a Stock Savings and Loan Association or a Stock Savings

Notice is hereby given that, pursuant to part 563b of the Rules and Regulations Applicable to All Savings Associations, (fill in name of applicant)

has filed an application with the Office of Thrift Supervision ("Office") for approval to convert to the Statechartered or Federally-chartered) stock form of organization. Copies of the application have been delivered to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, N.W. Washington, D.C. 20552, and to the District (Address, including zip code, of District Director).

Written comments, including objections to the plan of conversion and materials supporting the objections, from any member of the applicant or aggrieved person will be considered by the Office if filed within 10 business days after the date of this notice. Failure to make the written comments in objection may preclude the pursuit of any administrative or judicial remedies. Three copies of the comments should be sent to the Chief Counsel, Corporate and Securities Division, and one copy should be sent to the District Director. The proposed plan of conversion and any comments will be available for inspection by any member of the applicant at the Chief Counsel's Office and at the District Director's office. A copy of the plan of conversion may also be inspected at each office of the applicant.

(2) If a significant number of the applicant's members speak a language. other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be

published in that newspaper.

(3) Promptly after publication of the notice or notices prescribed in paragraphs (b)(1) and (b)(2), the applicant shall file four copies of each notice with the Office accompanied by an affidavit of publication from each

(c) Confidential information. Should the applicant desire to submit any information it deems to be of a confidential nature regarding the answer to any item or a part of any exhibit included in any application under this part, such information pertaining to such item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which such information should be

treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this part shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the Office determines to withhold from public availability under 5 U.S.C. 552 and part 505 of this chapter. The Office will withhold the public availability of preliminary copies of proxy soliciting materials without the necessity of their being bound and labeled as "confidential". The applicant will be advised of any decision by the Office to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent it deems necessary the Office may comment on such confidential submissions in any public statement in connection with its decision on the application without prior notice to the applicant.

#### § 563b.5 Solicitation of proxies; proxy statement.

(a) Solicitations to which rules apply. This section applies to every solicitation of a proxy from an association member of a savings association for the meeting at which a conversion plan will be voted upon, except the following:

(1) Any solicitation made otherwise than on behalf of the management of the savings association where the total number of persons solicited is not more

- (2) Any solicitation through the medium of a newspaper advertisement which informs association members, following approval of the plan of conversion, of a source from which they may obtain copies of a proxy statement, form of proxy, or any other soliciting material and does no more than:
- (i) Name the savings association; (ii) State the reason for the advertisement;
- (iii) Identify the proposal or proposals to be acted upon by association members; and

(iv) Urge the member to vote at the meeting.

(b) Use of proxy soliciting material to be authorized. No proxy soliciting material required to be filed with the Office prior to use shall be furnished to association members or otherwise released for distribution until the use of such material has been authorized in writing by the Office. Proxy material authorized for use by the Office shall be mailed to the association members within ten days of such authorization unless extended by the Office in writing.

(c) Information to be furnished association members. No solicitation subject to this section shall be made unless each person solicited is concurrently furnished, or has previously been furnished, a written proxy statement the use of which has been authorized by the Office.

(d) Requirements as to proxy. (1) The

form of proxy:

 (i) Shall indicate in bold face type whether the proxy is solicited on behalf of the management;

(ii) Shall provide specifically designated blank spaces for dating and

signing the proxy;

(iii) Shall identify clearly and impartially each matter or group of related matters intended to be acted upon:

(iv) Shall be clearly labeled "Revocable Proxy" in bold face type (at least as large as 18 point);

(v) Shall describe any charter or State law requirement restricting or conditioning voting by proxy;

(vi) Shall contain an acknowledgement by the person giving the proxy that he has received a proxy statement prior to signing the form of

(vii) Shall contain the date, time and place of meeting, if practicable;

(viii) Shall provide by a box or otherwise, a means whereby the person solicited is afforded an opportunity to specify by ballot a choice between approval or disapproval of each matter referred to therein as intended to be acted upon; and

(ix) Shall indicate in bold face type how the proxy shall be voted on each such matter to which no choice is so

specified.

(2) No proxy subject to this section shall confer authority to vote at any meeting other than the meeting (or any adjournment thereof) to vote on conversion. A proxy may be deemed to confer authority to vote with respect to matters incident to the conduct of such meeting. If the plan of conversion is considered at an annual meeting, existing proxies may be voted with respect to matters not related to the plan of conversion.

(3) The proxy statement or form of proxy shall provide that the votes represented by the proxy will be voted; that, where the person solicited specifies by means of a ballot provided pursuant to paragraph (d)(1)(viii) of this section a choice with respect to any matter to be acted upon, the votes will be voted in accordance with the specifications so made; and that if no choice is so

specified, the votes will be cast as indicated in bold face type on the form

of proxy.

(4) Notwithstanding any other provisions of paragraph (d) of this section, the proxy may be in a form previously obtained from a voting member and conferring general authority to vote on any and all matters at any meeting of the members or other authority to vote on matters to be presented at the special meeting, Provided: That such voting member has been furnished a proxy statement conforming with paragraph (c) of this section and the voting member does not grant a later-dated proxy to vote at the meeting called to consider the plan of conversion or attend such meeting and vote in person.

(e) Material required to be filed. (1) Applicants shall file ten preliminary copies of such proxy materials as are required by the form for applying for approval to convert under this part.

(2) Ten preliminary copies of any additional soliciting material subject to this section including soliciting material in the form of press releases, and radio or television scripts, to be used or furnished to association members subsequent to furnishing the proxy statement, shall be filed with the Office at least five business days prior to the date on which the Office is requested to authorize the use of such material. Speeches may, but need not be, filed with the Office prior to use.

(3) Twenty-five copies of the proxy statement and ten copies of the form of proxy and all other soliciting material, in the form in which such material is furnished to association members, shall be filed with or mailed for filing to the Office not later than the date such material is first sent or given to association members. All materials filed pursuant to this paragraph (e)(3) shall be accompanied by a statement of the date on which copies of such materials are to be released to association members.

(4) If the solicitation is to be made in whole or in part by personal solicitation, ten preliminary copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is to be furnished to the individuals making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with the Office at least five business days prior to the date on which the Office is requested to authorize the use of such material.

(5) All preliminary copies of material filed pursuant to paragraphs (e)(1), (e)(2) and (e)(4) of this section shall be clearly marked on the cover page "Preliminary

Copy". Such preliminary copies shall be for the information of the Office only and shall not be deemed available for public inspection except that such material may be disclosed to any department or agency of the United States Government or appropriate State Government and the Office may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Office.

(6) Unless requested by the Office, copies of replies to inquiries from members of the savings association and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to paragraph (e) of this section.

(7) Where any proxy statement, form of proxy or other material filed pursuant to paragraph (e) of this section is amended or revised, four of the required copies of such amended or revised material filed with the Office shall be marked to indicate clearly and precisely the changes effected therein subsequent

to the last prior filing.

(f) Mailing communications for associations members. If the management of the applicant has adopted a plan of conversion, the applicant shall perform such of the following acts as may be duly requested in writing with respect to a matter to be considered at the meeting to vote on the plan of conversion by any association member who will defray the reasonable expenses to be incurred by the applicant in the performance of the act or acts requested.

(1) The applicant shall mail or otherwise furnish to such association member the following information as promptly as practicable after the receipt of such request:

(i) A statement of the approximate number of association members who have been or are to be solicited on behalf of the management, or any group of such holders which the association member shall designate; and

(ii) An estimate of the cost of mailing a specified proxy statement, form of proxy or other communication to such

association member.

(2) Copies of any proxy statement, form of proxy or other communication furnished by the association member and as approved by the Office shall be mailed by the applicant to such of the association members specified in paragraph (f)(1)(i) of this section as the association member shall designate.

(3) Any such material which is furnished by the association member shall be mailed with reasonable promptness by the applicant after receipt of the material to be mailed, envelopes or other containers therefor and postage or payment for postage.

(4) Neither the management nor the applicant shall be responsible for such proxy statement, form of proxy or other communication.

- (g) False or misleading statements. (1) No solicitation of a proxy by the applicant, its management, or any other person for the meeting to vote on conversion shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for such meeting which has become false or misleading.
- (2) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Office and authorized for use shall not be deemed a finding by the Office that such material is accurate or complete or not false or misleading, or that the Office has passed upon the merits of or approved any proposal contained therein. No representation contrary to the foregoing shall be made by any person.
- (3) If a solicitation by management violates any provision of this section, the Office may require remedial measures including:
- (i) Correction of any such violation by means of a retraction and new solicitation;
- (ii) Rescheduling of the meeting for a vote on the conversion; and
- (iii) Any other actions the Office may deem appropriate in the circumstances in order to ensure a fair vote.
- (h) Prohibition of certain solicitations. No person soliciting a proxy from an association member for the meeting to vote on conversion shall solicit:
- Any undated or post-dated proxy;
   Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the association members;
- (3) Any proxy which is not revocable at will by the association member giving it or
- (4) Any proxy which is part of any other document or instrument (such as an account card).

#### § 563b.6 Vote by members.

(a) Vote at special meeting. Following approval by the Office of an application for conversion, the plan of conversion shall be submitted to a special meeting of members, unless in the case of a State-chartered converting savings association State law requires that the plan be considered at an annual meeting of members.

(b) Determining members eligible to vote. The record date for determining those members eligible to vote at the meeting called to consider a plan of conversion shall not be more than 60 nor less than 10 days prior to the date of such meeting, without prior approval of the Office, unless State law requires a

different voting record date.

(c)(1) Notice to members. Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Office. The notice shall be given not more than 45 nor fewer than 20 days prior to the date of the meeting to each association member, unless State law requires a different notice period. Such notice shall also be sent to each beneficial holder of an account held in a fiduciary capacity:

(i) In the case of a Federal association, where the account is an Individual Retirement Account and the name of the beneficial holder is disclosed on the association's records; and

(ii) In the case of a State-chartered association, where the beneficial holder possesses voting rights.

(2) Summary proxy statement. The proxy statement required by paragraph (c)(1) of this section may be in summary form, Provided:

(i) A statement is made in bold-face type on the notice to members required under paragraph (c)(1) of this section that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS;

(ii) The last date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of paragraph (c)(1) of this section. Without prior approval by the Office, the special meeting of members shall not be held fewer than 20 days after the last date on which the supplemental information statement is mailed to requesting members;

(iii) The supplemental information statement required to be furnished to members pursuant to paragraph (c)(2)(i) of this section may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to § 563b.3(d)(1) of this subpart A; and

(iv) The summary proxy statement shall be prepared in accordance with the following requirements:

(A) All of the requirements of Form PS shall be met, with the exception of the following:

(1) Item 6. Management Remuneration.

(2) Item 7. Business of the Applicant. Paragraphs (c) through (m), and (o).

(3) Item 14. Financial Statements. (4) Item 15. Consents of Experts and Reports, Paragraph (b).

(B) The disclosure requirements of Items 8(j), 9 and 13 of Form PS may be prepared in summary form.

(C) The disclosure requirements of Item 5 may be met through disclosure of the names, ages, and present occupations of all directors and executive officers.

(D) The plan of conversion shall not be required to be attached to the summary proxy statement under Item

(E) The statement contained in § 563b.8(u) of this part shall be included.

(d) Notice to eligible account holders and supplemental account holders who are not voting members. The converting savings association may give notice of the proposed conversion and the meeting of the association members by letter or other written communication authorized for use by the Office to eligible account holders and supplemental account holders who are not voting members. The contents of the notice shall be subject to §§ 563b.4(a)(4) and (a)(5), and 563b.5(g) of this part; the use of the notice shall be subject to § 563b.5(b) of this part; and filing of the notice with the Office shall be subject to § 563b.5(e)(1), (e)(3), (e)(5), and (e)(7) of this part.

(e) Required vote. The plan shall be approved by a vote of at least a majority of the total outstanding votes of the association members, unless State law requires a higher percentage for a State-chartered converting savings association, in which case the higher percentage shall be used. Voting may be in person or by proxy.

## § 563b.7 Pricing and sale of securities.

(a) General. (1) No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the Office of the application for conversion and until the proxy statement has been authorized for use by the Office.

(2) No offering circular may be transmitted to any person in connection with an offer or sale of a security that is the subject of a plan of conversion which has been filed with the Office unless the offering circular meets the requirements of this part or Part 563g.

(3) No sale of securities may be made except by means of a final offering circular which has been declared

effective by the Office.

(4) The provisions of § 563b.7(a) shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in priority of contract with

the applicant.

(b) Distribution of offering materials. Any preliminary offering circular which has been filed with the Office may be distributed in connection with the offering at the same time as or after the proxy statement is mailed to association members pursuant to § 563b.6(c) of this part. No final offering circular shall be distributed until it has been declared effective by the Office. The declaration of effectiveness of the final offering circular by the Office shall not extend beyond the maximum time period specified for the completion of the sale of all the capital stock in paragraph (i) of this section, or beyond such period of time as the Office shall establish upon a subsequent declaration of effectiveness in the event of the granting of an extension of time under paragraph (k) of this section.

(c) Estimated price information. If the offering is to commence prior to the meeting of the association members held to vote on the plan of conversion, the proxy statement authorized for use by the Office shall set forth the estimated price range. Any preliminary offering circular shall set forth the estimated price range. The maximum of such price range should normally be no more than 15 percent above the average of the minimum and maximum of such price range and the minimum should normally be no more than 15 percent below such average. The maximum price used in the price range should normally be no more than \$50 per share and the minimum no less than \$5 per share.

(d) Prohibited representations. The Office will review the price information required under this section in determining whether to give approval to applications for conversion when the offering is to commence prior to the meeting of association members, and will review the information in determining whether to declare a final offering circular effective. No representations may be made in any

manner that such price information has

been approved by the Office or that the

shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the Office or that the Office has passed upon the accuracy or adequacy of any offering circular covering such shares.

(e) Underwriting expenses. Underwriting commissions shall not exceed an amount or percentage per share accepted as reasonable by the Office or its delegate. No underwriting commission shall be allowed or paid with respect to shares of capital stock sold in the subscription offering unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(11) of this part; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is limited such that reasonable underwriting commissions thereon would not be sufficient to cover total accountable expenses and, in the case in which no public offering occurs, an underwriter may be paid a consulting fee reasonable under the circumstances as the Office shall accept. The term "underwriting commissions" includes underwriting discounts.

(f) Pricing materials. (1) In considering the pricing information required under paragraph (c) of this section, the Office will apply the following guidelines:

(i) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the Office;

(ii) The materials shall contain a brief summary of data that is sufficient to support the conclusions reached therein; and

(iii) To the extent that the appraisal is based on a capitalization of the pro forma income of the converted savings association, the materials must indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock associations, such existing stock associations must be reasonably comparable to the converting savings association in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

(2) In addition to the information required in paragraph (f)(1) of this section, the applicant shall submit information demonstrating to the satisfaction of the Office the independence and expertise of any person preparing materials under this paragraph. However, a person will not be considered as lacking independence for the reason that such person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with such appraisal.

(3) In addition to the information required in paragraphs (f)(1) and (f)(2) of this section, the applicant shall file with the Office such additional information with respect to the pricing of the capital stock of the association as the Office may request, including, without limitation, a full appraisal.

(g) Order forms for purchase of capital stock. (1) Promptly after the Office has declared effective the offering circular for the subscription offering, the applicant shall distribute order forms for the purchase of shares of capital stock in the offering to all eligible account holders, supplemental eligible account holders, voting members and other persons who may subscribe for shares of capital stock under the plan of conversion. If the converting savings association shall have adopted in its plan of conversion the optional provisions set forth in § 563b.3 (d)(5), (d)(6), or (d)(11) of this part, the applicant shall deliver order forms to the eligible account holders, supplemental eligible account holders, and voting members who requested receipt of the offering circular.

(2) Each order form shall be accompanied or preceded by the final offering circular for the subscription offering or the public offering, as the case may be, and a set of detailed instructions explaining how to properly

complete such order forms.

(3) The maximum subscription price stated on each order form shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the Office's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within the subscription price range, the applicant must obtain an amendment to the Office's approval. If appropriate, the Office will condition its approval by requiring a resolicitation of proxies and/ or order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price, unless the

subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock.

(4) Each order form shall be prepared so as to indicate to the person receiving it, in as simple, clear and intelligible a manner as possible, the actions which are required or available to him or her with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(i) Indicate the maximum number of shares that may be purchased pursuant

to the subscription rights;

(ii) Indicate the period of time within which the subscription rights must be exercised, which period of time shall be no less than 20 days and no more than 45 days following the date of the mailing of the subscription offering order form;

(iii) State the maximum subscription price per share of capital stock;

(iv) Indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(v) Provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other

person wishes to purchase;

(vi) Indicate the manner of required payment and, if such payment may be made by withdrawal from a certificate of deposit, indicate that such withdrawal may be made without penalty. If payment is to be made by withdrawal from a savings account or certificate of deposit, a box to check should be provided;

(vii) Provide specifically designated blank spaces for dating and signing the

order form;

(viii) Contain an acknowledgment by the account holder or other person signing the order form that he or she has received a final offering circular prior to

so signing; and

(ix) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are nontransferable and will become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or places to which the order forms are to be returned and when the order forms shall be deemed to be received, such as by date and time of actual receipt at the address indicated or by date and time of postmark.

(5) The order form may provide that it may not be modified without the applicant's consent after its receipt as set forth in the order form. If payment is to be made by withdrawal from a savings account or certificate of deposit, the applicant may, but need not, cause such withdrawal to be made upon

receipt of the order form. If such withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the account withdrawn as if such amount had remained in the account from which it was withdrawn until such closing date.

(h) Withdrawal from certificate accounts. Notwithstanding any regulatory provision regarding penalties for early withdrawal from certificate accounts, the applicant may allow payment for capital stock pursuant to the exercise of subscription rights by withdrawal from a certificate account without the assessment of such penalties. In the case of early withdrawal of only a portion of such account, the certificate evidencing such account shall be cancelled if the applicable minimum balance requirement ceases to be met. The remaining balance will earn interest at the passbook rate.

(i) Period for completion of sale. The sale of all shares of capital stock of the converting savings association to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless

extended by the Office.

(j) Interest on subscriptions and direct community offering purchase orders. The converting savings association shall pay interest at not less than the passbook rate on all amounts paid in cash or by check or money order to the association to purchase shares of capital stock in the subscription offering or direct community offering from the date payment is received by the association until the conversion is completed or terminated.

(k) Extensions of time to complete public offering or direct community offering; post-effective amendments to subscription offering circular. (1) The Office may grant one or more extensions of the time required to complete the sale of all shares of capital stock under paragraph (i) of this section, provided that no single extension of time shall

exceed 90 days.

(2) Immediately upon the granting of an extension of time pursuant to paragraph (k)(1) of this section, the converting savings association shall distribute to each subscriber in the offering and, if applicable, each person who has ordered capital stock in the direct community offering, a post-effective amendment to the offering circular filed under an amendment to the application for conversion and declared effective by the Office

pursuant to paragraph (k)(4) of this section which shall notify each subscriber and each ordering person of the granting of the extension of time, and of the right of each subscriber and each ordering person to increase, decrease or rescind this subscription: (i) At any time prior to 20 days before the end of the extension period; or (ii) at any time prior to the date of the commencement of the public offering or the direct community offering: Provided, That if the public offering or the direct community offering is not completed within 20 days after its commencement, all instructions from subscribers and ordering persons to increase, decrease, or rescind their subscriptions or orders received during the 20-day offering period shall be honored by the converting savings association.

(3) For the purpose of paragraph (k) of this section, the public offering shall be deemed to commence upon the filing with the Office of the preliminary offering circular for the public offering, and the direct community offering shall be deemed to commence upon the declaration of effectiveness by the Office of the final offering circular.

(4) After the expiration of subscription rights, the converting savings association shall file with and have declared effective by the Office a post-effective amendment to the offering circular delivered to subscribers upon the occurrence of any event, circumstance, or change of circumstance which would be material to the investment decision of a subscriber or, if applicable, a person who has ordered capital stock in the direct community offering.

(5) Any post-effective amendment to an offering circular distributed to subscribers in the offering shall be distributed by the converting savings association immediately after the declaration of effectiveness to each subscriber, and, if applicable, each person who has ordered stock in the direct community offering, and the converting savings association shall grant to each subscriber and ordering person the right to increase, decrease, or rescind his or her subscription or order for a period which shall be no less than the greater of ten days from the date of the mailing of the post-effective amendment or the period remaining in an extension of time granted by the Office pursuant and subject to the provisions of paragraph (k)(2) of this

## § 563b.8 Procedural requirements.

(a) Filing an application for conversion. An applicant that desires to

convert in accordance with this part shall file ten copies of an application for approval in the form prescribed by the

(b) Return of improperly executed or materially incomplete filings. (1) Any application for approval that is improperly executed shall not be accepted for filing and shall be returned to the applicant.

(2) Subject to the provisions of paragraph (b)(3) of this section, any application for approval that does not

contain copies of:

(i) A plan of conversion;

(ii) A preliminary proxy statement with signed financial statements; and

(iii) A preliminary form of proxy, shall not be accepted for filing and shall be returned to the applicant.

Any application for approval containing a materially incomplete plan of conversion, proxy statement, or form of proxy may be returned by the Office to

the applicant.

(3) Any application for approval which contains, at a minimum, a materially complete plan of conversion shall be accepted for filing if the application for approval is accompanied by the written request of the applicant that the application not be reviewed by the Office until the applicant requests and the Office consents to the filing of the additional materials set forth in paragraph (b)(2) of this section.

(c) Additional filing requirements. An applicant whose plan of conversion has been approved by the Office shall fulfill

the following requirements.

(1) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion a certified copy of each resolution adopted at such meeting relating to the plan of conversion, together with the following information:

(i) The total number of votes eligible

to be cast;

(ii) The total number of votes represented in person or by proxy at the

(iii) The total number of votes cast in favor of and against each such matter; and

(iv) The percentage of votes necessary to approve each such matter.

The compilation of the votes cast at the meeting may be prepared for the savings association by an independent public accountant or by an independent transfer agent.

(2) The applicant shall file with the Office promptly after the meeting of association members called to consider the plan of conversion an opinion of

counsel to the effect that:

(i) The meeting of members was duly held in accordance with all requirements of applicable State and Federal law and regulation;

(ii) All requirements of State law applicable to the conversion have been

complied with; and

(iii) If the association has used proxies executed prior to the proxy solicitation required by § 563b.6(c)(1), the authority conferred by such proxies includes authority to vote on the plan of conversion.

(3) Each offering circular for the offering shall be prepared in compliance with this part and Form OC. The applicant shall file with the Office ten copies of each preliminary offering circular and twenty-five copies of each

final offering circular.

(d) Termination or amendment of charter. (1) Upon approval of a plan of conversion by the members of a Statechartered savings association or a Federal savings association which is converting to a State-chartered stock savings association, the charter of such savings association shall terminate effective upon the issuance to it of a stock charter under the laws of the State in which the home office of the applicant is located. If such converting savings association is a Federal savings association, its Federal charter shall promptly be surrendered to the Office for cancellation. A savings association converting to a State-chartered stock savings association shall promptly file with the Office a copy of the stock charter issued to it.

(2) A mutual association converting to a Federal stock association shall apply to amend its charter and bylaws to read in a form consistent with part 552 of this chapter. The effective date of such amendment shall be stated in the Office's order approving the conversion.

(3) The corporate existence of a mutual association converting to a federally-chartered stock association shall not terminate, but the converted association shall be deemed to be a continuation of the association so converted. In the case of a Federal or a State-chartered mutual savings association converting to a Statechartered stock savings association, unless State law otherwise prescribes, the corporate existence of the converting savings association shall similarly not terminate and the converted savings association shall be deemed to be a continuation of the savings association so converted.

(e) Number of copies; place of filing; binding; signatures. (1) Whenever a requirement is made under this part for the filing of four copies of any document with the Office, one copy shall be filed

with the District Director or his or her designee and the remaining copies with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552. Whenever a requirement is made under this part for the filing of ten or more copies of any document with the Office, three copies shall be filed with the District Director or his or her designee and the remaining copies with the Chief Counsel, Corporate and Securities Division. Whenever a requirement is made under this part that a document to be filed be manually signed, one manually signed copy shall be filed with the District Director or his or her designee and another with the Chief Counsel, Corporate and Securities Division. Other copies shall be conformed. Each of the copies filed under this part shall be bound, in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

(2) At least two copies of every application and every amendment thereto filed shall be manually signed

(i) A duly authorized representative of the applicant on its behalf;

(ii) Its principal executive officer;

(iii) Its principal financial officer;

(iv) Its principal accounting officer;

(v) At least two-thirds of its directors.

(3) If any name is signed to an application or any amendment thereto pursuant to a power of attorney, four copies of such power of attorney, including two manually signed, shall be filed with the application.

(4)(i) Except as provided in paragraph (e)(4)(ii) of this section, the filing of any application or amendment thereto under this part shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each member of the applicant's board of directors (whether or not such director has signed the application or any amendment thereto) severally that:

(A) He or she has read such application or amendment;

(B) In the opinion of each such person, he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that such application or amendment complies to the best of his or her knowledge and belief with the

applicable requirements of this part and forms prescribed hereunder; and

(C) Each such person holds such informed opinion.

(ii) The representations specified in paragraph (e)(4)(i) of this section shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, such director files with the Office within 10 business days after the filing of such application or amendment a statement describing those portions of such filing as to which he or she does

not so represent.

(f) Requirements as to paper and printing. (1) Applications shall be filed on good quality, unglazed, white paper approximately 8½ by 13 or 8½ by 11 inches in size, insofar as practicable. However, tables, charts, maps and financial statements may be on larger paper if folded to such sizes, and the plan of conversion, proxy statement and offering circular may be on smaller paper if the applicant so desires.

(2) Applications and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or type-written. However, applications for any portion thereof may be prepared by any similar process which, in the opinion of the Office, produces copies suitable for a permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such

on photocopies.

(g) Method of preparation. Every application shall furnish information in item-and-answer form in response to the items of the appropriate form, and shall include the captions of the form, but omit the text of all items and instructions. Every proxy statement and offering circular shall present information as provided in paragraph (n) of this section in response to the items of the appropriate form in lieu of furnishing the information in item-andanswer form, and shall omit the captions and text of all items and instruction. Every application shall include a cross reference sheet showing the location in the proxy statement and offering circular of the response to the items of the appropriate form. If any such item is inapplicable, or the answer thereto is in the negative and is omitted, a statement to that effect shall be made in the cross reference sheet.

(h) Interpretation of requirements. (1)
 Unless the context indicates otherwise,

the forms require information only as to the applicant.

(2) Whenever words relate to the future, they have reference solely to

present intention.

(3) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or offices.

holders of such positions or offices.
(i) Additional information. In addition to the information expressly required to be included in any application under this part, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they made,

not misleading.

(j) Information unknown or not reasonably available. Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

(1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together

with the sources thereof.

(2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

(k) Incorporation of certain information by reference. (1) Where an item in an application calls for information not required to be included in the proxy statement or offering circular, matter contained in any part of the application, including exhibits, may be incorporated by reference in answer, or partial answer, to such item. No information may be incorporated by reference in a proxy statement or offering circular, unless the document containing such information is attached thereto or is summarized or outlined as provided in paragraph (l) of this section. However, an offering circular may incorporate by reference the information contained in a proxy statement previously delivered, without need of summary or outline.

(2) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the application where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

(1) Summaries or outlines of documents. Where a summary or outline of the provisions of any document is required, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular items, sections or paragraphs of any exhibit and may be qualified in its

entirety by such reference.

(m) Legibility of materials. The body of all printed plans of conversion, proxy statements, and offering circulars, including all notes to financial statements and other tabular data included therein, shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(n) Presentation of information. (1) The information required in a proxy statement or offering circular need not follow the order of the items or other requirements in the appropriate form. Such information shall not, however, be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading. Where an item requires information to be given in tabular form it shall be given in substantially the tabular form specified in the item.

(2) All information contained in a plan of conversion, proxy statement or offering circular shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in any form under this part shall be divided into reasonably short paragraphs or sections.

(3) Every proxy statement and offering circular shall include in the forepart thereof a reasonably detailed table of contents showing the subject matter of its various sections or subdivisions and the page number on which each such

section or subdivision begins.

(4) All information required to be included in a proxy statement or offering circular shall be clearly understandable without the necessity of referring to the particular form or to the regulations under this part. Except as to financial statements and information required in tabular form, the information set forth in a proxy statement or offering circular may be expressed in condensed or summarized form.

(5) Financial statements are to be set forth in comparative form, and shall include the notes thereto and the accountants' certificate or certificates. Section 563c.1 of this subchapter governs the certification, form and content of such financial statements, including the basis of consolidation.

(o) Application of amendments to regulations and forms. (1) The form and contents of any filing made under the provisions of this part need conform only to the applicable regulations and forms then in effect, and contain the information, including financial statements specified therein, required at the time the filing is made, notwithstanding subsequent amendments to such regulations, except as otherwise provided in any such amendment or in paragraph (o)(2) of this section.

(2) Whenever the Office prohibits by order or otherwise the use of any filing under this part, the form and contents of any filing used thereafter shall conform to the requirements of such order and the applicable regulations and forms in effect at the time such prohibition

ceases to be effective.

(p) Consents of experts. (1) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this part are named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of such person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this part, the written consent of the expert shall expressly state that the expert consents to such quotation or summarization.

(2) All written consents filed pursuant to paragraph (p) of this section shall be dated and signed manually. A list of such consents shall be filed with the application. Where the consent of the expert is contained in his or her report, a reference shall be made in the list to the report containing such consent.

(q) Consents of persons about to become directors. If any person who has not signed an application is named in the proxy statement or offering circular as about to become a director, the written consent of such person shall be filed with the appropriate form.

filed with the appropriate form.
(r) Date of filing. The date on which any documents are actually received by the Office in the manner prescribed in this part shall be the date of filing

thereof.

(s) Amendments. All amendments to any application under this part shall be filed under cover of an appropriate facing sheet, shall be numbered consecutively in the order in which filed, and shall conform to all pertinent regulations applicable to the type of application which they amend.

(t) Pre-filing conferences with applicants. (1) The staff of the Office, including the District Director or his or her designee, will be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of discussing generally the problems confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Pre-filing review of an application may be refused by the staff of the Office if such review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under paragraph (1) of this section, the staff of the Office will not undertake to prepare material for filing but will limit themselves to indicating the kind of information required, leaving the actual drafting to the applicant and its

representatives

(u) Review of the Office's action. Any person aggrieved by a final action of the Office which approves, with or without conditions, or disapproves a plan of conversion pursuant to this part may obtain review of such action by filing in the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or in the U.S. Court of Appeals for the District of Columbia Circuit, a written petition praying that the final action of the Office be modified, terminated or set aside. Such petition must be filed within 30 days after publication of notice of such final action in the Federal Register, or 30 days after the mailing by the applicant of the notice to members as provided for in § 563b.6(c) of this part, whichever is later. The further procedure for review is as follows: A copy of the petition is forthwith transmitted to the Office by the clerk of the court and thereupon the

Office files in the court the record in the proceeding, as provided in section 2112 of title 28 of the U.S. Code. Upon the filing of the petition, the court has jurisdiction, which upon the filing of the record is exclusive, to affirm, modify, terminate, or set aside in whole or in part, the final action of the Office. Review of such proceedings is had as provided in Chapter 7 of Title 5 of the U.S. Code. The judgment and decree of the court is final, except that they are subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28 of the U.S. Code.

 (v) Post-conversion reports. The applicant shall file such post-conversion reports concerning its conversion as the

Office may require.

(w) Delegation of authority. The Director of the Office delegates to the Chief Counsel or his or her designee the authority to approve but not to deny applications for conversion pursuant to the standards and restrictions set forth in this subpart A, and to exercise any other authority of the Office under this subpart A, except:

 (i) The authority to waive any material provision of this subpart A pursuant to § 563b.1(a) of this part;

(ii) The authority to approve other equitable provisions in the plan of conversion under § 563b.3(d)(12) of this part;

(iii) The authority to approve any application for conversion in regard to which an objection has been filed pursuant to § 563b.4(b)(1) of this part;

(iv) The authority to approve an application for approval to offer to acquire or to acquire more than 10 percent of the stock of a converted savings association under § 563b.3(i)[3] of this part that raises a significant issue of law or policy or to deny an application submitted under that paragraph.

The Director of the Office also delegates to the Chief Counsel or his or her designee, in connection with the approval of an application for conversion under this subpart A, the authority to approve but not to deny applications for approval of security forms, charter amendments, and bylaw amendments under § 563.1 of this subchapter and parts 544 and 552 of this chapter.

§ 563h.9 Conversion of a savings association in connection with the formation of a holding company.

A savings association may convert to the stock form pursuant to this subpart A as part of a transaction in which a holding company is organized to acquire upon issuance all the capital stock of the converted savings association. In such a transaction eligible account holders, supplemental eligible account holders. and voting members of the converting savings association shall receive, without payment, nontransferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part to purchase capital stock of the newly-formed holding company in lieu of capital stock of the converting association. Unless clearly inapplicable, all of the requirements of this subpart A shall apply to a conversion under this section.

§ 563b.10 Conversion of a savings association in connection with an acquisition by an existing holding company; conversion of a savings association through merger with an existing stock savings association.

(a) Conversion involving an existing holding company. A savings association may convert to the stock form pursuant to this Part 563b as part of a transaction in which an existing holding company acquires upon issuance all the capital stock of the converted savings association. In such a transaction the eligible account holders, supplemental eligible account holders, and voting members of the converting savings association shall receive, without payment, nontransferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part from the holding company to purchase its capital stock in lieu of capital stock of the converting association. Unless clearly inapplicable, all of the requirements of this part 563b shall apply to a conversion under this paragraph (a).

(b) Merger involving the issuance of holding company capital stock. A savings association may convert to the stock form pursuant to this Part 563b by merging into an existing stock savings association which is a wholly-owned subsidiary of a holding company. In such a transaction the eligible account holders, supplemental eligible account holders, and voting members of the converting savings association shall receive, without payment, nontransferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part from the holding company to purchase its capital stock in lieu of capital stock of the converting savings association. Unless clearly inapplicable, all of the requirements of this part 563b shall apply to a conversion under this paragraph (b).

(c) Merger with an existing stock savings association. (1) A savings association may convert to the stock form by merging with an existing stock savings association as part of a transaction in which the equity securities of the existing stock savings association or the converting savings association are issued. In such a transaction in which the existing stock savings association is the surviving association, the eligible account holders, supplemental eligible account holders, and voting members of the converting association shall receive, without payment, nontransferable rights under § 563b.3(c)(2), (c)(4), and (c)(5) of this part from the existing stock savings association to purchase its capital stock in lieu of capital stock of the converting savings association. Unless clearly inapplicable, all of the requirements of this part 563b shall apply to a conversion under paragraph (c) of this section.

(2) A savings association that qualifies for a voluntary supervisory conversion under subpart C of this part, or a modified conversion under Subpart D of this part, also may convert to stock form by merging with an interim Federal or state chartered stock association in a transaction in which stock of the resulting association is issued.

(i) Following the date of the completion of a merger conversion of an association that qualifies for a voluntary supervisory conversion in accordance with subpart C of this part, § 563b.3(i)(3) of this part shall be applicable with respect to the equity securities of the resulting association for the period specified in paragraph (c)(2)(ii) of this section.

(ii) The period specified shall be six months if the converting insolvent association has between \$100 million and \$250 million in total assets: twelve months if the converting insolvent association has between \$250 million and \$500 million in total assets; eighteen months if the converting insolvent association has between \$500 and \$750 million in total assets; twenty-four months, if the converting insolvent association has between \$750 million and \$1 billion in total assets; thirty months if the converting insolvent association has between \$1 and \$2 billion in total assets; and thirty-six months if the converting insolventassociation has more than \$2 billion in total assets. In all of the foregoing cases, total assets shall be calculated at the end of the fiscal quarter of the converting association concluded immediately prior to the filing of the voluntary supervisory merger conversion application.

#### Subpart B-[Reserved]

Subpart C-Voluntary Supervisory Stock Conversions

#### § 563b.20 Scope of subpart.

(a) Except as the Office may otherwise determine, the provisions of this subpart shall govern the voluntary supervisory conversion from the mutual to stock form of savings associations as authorized, ordered or concurred in by the Office or the FDIC pursuant to sections 5(i) (1) and (2), 5(o)(2)(C), and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(i) (1), (2), (o)(2)(C), and (p).

(b) All of the provisions of Subpart A of this part shall apply to a supervisory conversion undertaken pursuant to this subpart unless clearly inapplicable.

# § 563b.21 Voluntary supervisory conversions.

A voluntary supervisory conversion of a savings association pursuant to this subpart may be accomplished through the sale of the association's securities issued in the conversion directly to a person or persons. Such a conversion may also occur through the merger of the association into a stock association newly-chartered for the purpose of facilitating the conversion. At least a majority of the board of directors of the converting association shall adopt a plan of voluntary supervisory conversion that is in accordance with the provisions of this subpart. The members of the association shall have no rights of approval or participation in the voluntary supervisory conversion, or to the continuance of any legal or beneficial ownership interest in the converted association.

## § 563b.22 Purpose of subpart.

The purpose of this subpart is to give guidance to savings associations and potential acquirors of the stock of converting savings associations regarding the qualification of savings associations for a supervisory conversion under this subpart, and guidance as to the extent to which the Office will permit, by means of a supervisory conversion, deviations from the substantive and procedural requirements adopted by the Office for standard conversions under Subpart A of this part.

# § 563b.23 Authorization of supervisory conversions.

The Office will consider authorizing or ordering a supervisory stock conversion if the savings association files an application containing the information and documents specified in § 563b.27 of this subpart, in accordance with the procedures specified in

§ 563b.28 of this subpart, and meets the qualification standards specified in § 563b.24 of this subpart. If the Office authorizes or orders a supervisory stock conversion, the conditions specified in § 563b.29 of this subpart must be fulfilled and the converted savings association and the purchaser or purchasers of its conversion stock must comply with the requirements of § 563b.30 of this subpart.

# § 563b.24 Qualification for supervisory conversion of SAIF-insured savings associations.

The Office in its discretion may authorize the supervisory conversion of a SAIF-insured savings association when:

(a) The association's liabilities exceed its assets, as calculated under generally accepted accounting principles on a going concern basis; and

(b) The association would be a viable entity as determined under § 563b.26 of this part following the conversion.

# § 563b.25 Qualification for supervisory conversion of BIF-insured savings associations.

- (a) The Office may, in its discretion, concur with the determination of the FDIC that a BIF-insured mutual savings bank qualifies for a voluntary supervisory conversion if the FDIC certifies to the Office in accordance with section 5(o)(2)(C) of the Home Owners' Loan Act, 12 U.S.C. 1464(o)(2)(C), that severe financial conditions exist that threaten the stability of the savings bank and that the voluntary supervisory conversion is likely to improve the financial condition of the savings bank; or
- (b) The Office may, in its discretion, authorize a BIF-insured savings association to undergo a voluntary supervisory conversion to Federal stock form if the following conditions have been met:

(1) The association's liabilities exceed its assets, as calculated under generally accepted accounting principles, assuming the association is a going concern; and

(2)(i) A sufficient amount of permanent capital stock is issued in connection with the voluntary supervisory conversion to allow the association to meet its capital requirement as established by the FDIC immediately upon completion of the conversion; or

(ii) The FDIC has indicated that, based upon the association's proposed post-conversion operating plan, the association would achieve a capital level acceptable to the FDIC within a period satisfactory to the FDIC.

# § 563b.26 Viability of converted savings association.

(a) An application of a SAIF-insured savings association to convert pursuant to this subpart may be approved by the Office in its discretion if it finds that the SAIF-insured savings association will be a "viable entity" following the conversion.

(b) A converting SAIF-insured savings association is a "viable entity" if either paragraph (b)(1) or (b)(2) of this section, and paragraph (b)(3) of this section are

(1) As part of the plan of conversion, the prospective acquirer shall infuse sufficient capital at the conversion to enable the association to achieve a ratio of net worth to total liabilities, equal to the greater of:

(i) Three percent (3%) of liabilities, computed on the basis of generally accepted accounting principles; or

(ii) The association's regulatory capital requirement established under applicable law and regulations of the Office thereunder.

(2) As part of the plan of conversion, the prospective acquirer shall:

(i) Infuse sufficient capital at the conversion to enable the association to achieve a ratio of net worth to total liabilities, computed on the basis of generally accepted accounting principles, of at least one percent (1%) of total liabilities; and

(ii) Agree in writing with the Office that the acquirer will infuse additional capital as necessary to enable the association to increase its regulatory capital on a scheduled basis in order to comply with applicable regulatory capital requirements in effect from time to time within five years of the date of conversion, and agree that upon failure to achieve scheduled regulatory capital levels on or before the due date or to adhere in all material aspects to the business plan submitted as part of the supervisory conversion application, the acquirer shall be subject to such sanctions as the Office, in connection with its approval of the supervisory conversion application, directs to be included in the written agreement, or which are otherwise authorized by law.

(3) The transaction taken as a whole is in the best interests of, and does not present the potential for injury to, the converting association, its depositors and the SAIF or BIF, as the case may be.

# § 563b.27 Application for voluntary supervisory stock conversion.

A savings association may apply for the Office's approval of a voluntary supervisory conversion pursuant to this subpart by filing the following information and documents in accordance with the procedures specified in § 563b.28 of this subpart:

(a) A plan of conversion adopted by the board of directors of the association, which shall contain at a minimum, the name and address of the savings association; the names, addresses, dates and places of birth, and social security numbers of the proposed purchasers of conversion stock and their relationship to the savings association; the title, perunit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers or their affiliates and associates (as defined in § 563b.2(a) of this part); the form of consideration to be paid for the conversion stock; and certified copies of all resolutions of the board of directors relating to the Plan.

(b) A copy of any agreements between the savings association and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the savings association arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-free reorganization.

(d) The business plan which shall contain a description of the proposed operating policies of the savings association following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the savings association's results of operations for the three-year period following completion of the conversion. The savings association shall specify the assumptions on which its projections are based.

(e) A Holding Company Act application or a Control Act notice for each proposed conversion stock purchaser as required by § 574.3 of this subchapter, whichever is applicable, and the prior-conduct certification required by Memorandum SP-51 issued by the Senior Deputy Director for Supervision (Operations).

(f) The proposed charter and bylaws of the converted savings association.

(g) The proposed stock certificate form.

(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR Parts 563b and 563g.

(j) A subordinated debt application, if applicable.

(k) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of the applications for Federal Home Loan Bank membership, and FDIC insurance of accounts, if applicable.

(1) An opinion of an independent certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Memorandum No. R-55 of the Senior Deputy Director for Supervision (Operations).

(m) Information to support the value of any non-cash assets to be contributed to the savings association in connection with the voluntary supervisory conversion, if applicable. Appraisals submitted in this connection must be acceptable to the Office and, in the case of real estate assets, meet the standards of Memorandum No. R-41c of the Senior Deputy Director for Supervision (Operations).

(n) A description of the estimated expenses of the voluntary supervisory conversion to the savings association.

(o) An audited balance sheet: (1) Prepared in accordance with generally accepted accounting principles of a date within 90 days of the date of submission of the conversion application;

(2) Prepared by an auditor, and in the form of an audit report, both of which meet the requirements of Article 2 of Regulation S-X, 17 CFR 210.2; and

(3) Which reflects a debit balance in

retained earnings.

(p) Pro forma financial statements that apply "push down" accounting to the financial statements described in paragraph (o) of this section, if such accounting treatment is appropriate under generally accepted accounting principles, and that reflect stockholders' equity equal to at least:

(1) The greater of (i) 3 percent of the association's total liabilities or (ii) the association's regulatory capital requirement under applicable law and regulations of the Office thereunder; or

(2) One percent of the association's

total liabilities.

(q) An opinion of independent counsel that the voluntary supervisory conversion of a state-chartered savings association to state stock form is authorized under applicable state law, if applicable.

(r) A specific description of any of the features of the savings association's application that do not conform to the requirements of this subpart.

(s) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the voluntary supervisory conversion.

#### § 563b.28 Procedural requirements.

(a) Filing of voluntary supervisory conversion application. A savings association seeking to convert pursuant to this subpart shall file an original and one copy of its supervisory conversion application containing the information and documents specified in § 563b.27 of this subpart with the Chief Counsel's Office, Corporate and Securities Division, with one copy each to the Senior Deputy Director for Supervision (Operations) and to the District Director. The application shall be deemed to be filed on the date received by the Corporate and Securities Division.

(b) Incomplete application. An application for supervisory stock conversion that does not contain all of the applicable information and documents specified in § 563b.27 of this part shall constitute an incomplete application, and the District Director shall continue to seek other appropriate supervisory resolutions of the association's financial condition pending the filing of a complete application.

(c) The Director of the Office delegates to the Chief Counsel or his or her designee, the authority to approve applications for voluntary supervisory conversions, and to exercise the authority of the Office pursuant to this

subpart, provided that:

(1) The application does not present a significant issue of law or policy; and

(2) The Senior Deputy Director for Supervision (Operations) does not raise supervisory objection to the application based upon significant unresolved supervisory issues with respect to the financial or managerial resources of the converting association, the items specified in §§ 563b.24, 563b.25, and 563b.26 of this part, or the items required to be submitted pursuant to paragraphs (b), (d), (h), (j), (1), (m), (n), (o), (p), (r) and (s) of § 563b.27 of this part.

(d) Termination or amendment of charter. (1) Upon approval by the Office of a plan of supervisory stock conversion of a state-chartered savings association or a federally-chartered savings association which is converting to a state-chartered stock savings association, the mutual charter of such savings association shall terminate upon the issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting savings association is a federally-chartered savings association,

its federal charter shall be surrendered promptly to the Office for cancellation. A savings association converting to a state-chartered stock savings association shall promptly file with the Office a copy of the stock charter issued

(2) A mutual savings association converting to a federally-chartered stock savings association shall apply to amend its charter and bylaws to read in a form consistent with Part 552 of this chapter. The effective date of such amendment shall be stated in the Office's order approving the conversion.

(3) The corporate existence of a mutual savings association converting to a federally-chartered stock savings association shall not terminate, but the converted association shall be deemed to be a continuation of the association so converted. In the case of a federal or state-chartered mutual savings association converting to a statechartered stock savings association, unless state law otherwise prescribes, the corporate existence of the converting mutual savings association shall similarly not terminate and the converted savings association shall be deemed to be a continuation of the savings association so converted.

#### § 563b.29 Conditions of approval.

The Office's approval of a supervisory conversion application will be conditioned upon the following:

(a) Completion of the sale of conversion stock within a maximum of three months after the Office approves the application, or within such additional period as the General Counsel or his or her designee may for good cause grant;

(b) Compliance with all filing requirements of 12 CFR parts 563b and

(c) Submission of an opinion of independent legal counsel that all applicable state securities law requirements have been met in connection with the sale of the association's conversion stock;

(d) Compliance with all applicable laws, rules, and regulations; and

(e) Satisfaction of any other requirement or conditions the Office may impose.

#### § 563b.30 Sale of conversion stock.

Each savings association that converts pursuant to this subpart shall offer and sell its conversion stock pursuant to the requirements of 12 CFR part 563g.

#### § 563b.31 Expenses.

Expenses incurred by a savings association in connection with its voluntary supervisory conversion application shall be reasonable and, with respect to a SAIF-insured savings association, shall not be in an amount such that the payment of such expenses would render the proceeds to the association from the sale of its conversion stock insufficient to satisfy the viability requirement of § 563b.26 of this subpart.

#### § 563b.32 Employment contracts.

An applicant for voluntary supervisory conversion must justify any employment contract incidental to the conversion, and otherwise demonstrate that the making of such an employment contract by a savings association would not be an unsafe or unsound practice or represent a sale of control. The Office shall determine the permissibility of such contract based upon, at a minimum, the applicant's justification for the contract, the term, salary, and severance provisions of the contract, the identity and background of the officer or employee who is subject to the employment contract, and the amount of the conversion stock to be purchased by such officer or employee or his or her affiliates or associates. Any employment contract incident to a voluntary supervisory conversion with a term in excess of one year granted to existing management of a savings association generally will be disfavored.

#### Subpart D-Guidelines for Modified Conversions

### § 563b.34 Scope of subpart.

(a) This subpart establishes guidelines for modified conversion from the mutual to stock form of savings association as authorized, ordered or concurred in by the Office or the FDIC pursuant to sections 5(i) (1) and (2), 5(o), and 5(p) of the Home Owners' Loan Act, 12 U.S.C. 1464(i) (1) and (2), (o), and (p).

(b) The provisions of this subpart are not exclusive and may be waived by the

Office.

#### § 563b.35 Modified stock conversion.

A modified conversion generally is available to an association that fails to meet its regulatory capital requirement. In a modified conversion, the substantive and procedural rights granted to members in mutual savings associations converting under Subpart A may be restricted in order to meet the needs of a savings association whose financial condition has deteriorated such that a standard conversion which would raise sufficient capital to enable

the association to achieve a satisfactory capital level is not feasible. Modified conversions may be effected without the approval of members, must involve sales of conversion stock at an aggregate price in excess of the pro forma market value of the association as determined by an independent appraiser, and involve the limitation of members' preemptive rights.

#### § 563b.36 Purpose of subpart.

The purpose of this subpart is to give guidance to savings associations and potential acquirors of the stock of savings associations regarding the qualification of savings associations for a modified conversion under this subpart, and guidance as to the extent to which the Office will permit, by means of a modified conversion, deviance from the substantive and procedural requirements adopted by the Office for standard conversions under subpart A of this part.

#### § 563b.37 Qualification for modified conversion.

(a) The Office may, in its discretion, approve or order a modified conversion if it finds that:

(1) The savings association does not meet its regulatory capital requirement calculated according to generally accepted accounting principles; and

(2) The projected net proceeds of the sale of conversion stock by the savings association in a standard conversion under Subpart A, as demonstrated by an appraisal determined to be acceptable to the Office, would not be sufficient to enable the association to meet its regulatory capital requirement computed in accordance with generally accepted

accounting principles.

(b) The Office may, in its discretion, concur that a BIF-insured mutual savings bank qualifies for a modified conversion to federally-chartered stock savings bank form if the FDIC certifies to the Office in accordance with section 5(o)(2)(C)-(E) of the Home Owners' Loan Act that severe financial conditions exist that threaten the stability of the savings bank and conversion to the federally-chartered stock savings bank form is likely to improve the financial condition of the savings bank.

#### § 563b.38 Authorization of modified conversion.

(a) All of the provisions of Subpart A of this part shall apply to a conversion undertaken pursuant to this subpart unless clearly inapplicable.

(b) The Office may authorize the conversion to the stock form of a savings association under this subpart upon the filing of an application

approved by resolution of the majority of the board of directors of the association, but neither the Office nor the association is required to secure the prior approval of the association's members of the conversion.

(c) A savings association that has converted to the stock form pursuant to this subpart is required to establish a liquidation account on behalf of the association's members as required

under § 563b.3(f) of this part.

(d) A savings association converting under this Subpart D shall sell its stock at an aggregate price exceeding the estimated pro forma market value of the association, including an appropriate control premium, based on an independent valuation determined to be acceptable by the Office, as provided in § 563b.7 of this part.

(e) The Office may, in its discretion, approve an application for conversion pursuant to this subpart if it is demonstrated to the Office's satisfaction, through a submission prepared by an independent appraiser, investment banking firm or other

qualified person, that:

(1) The net capital to be received from the sale by the converting savings association of its capital stock pursuant to this subpart, would cause the savings association to meet its regulatory capital requirement computed in accordance with generally accepted accounting principles; and

(2) The transaction would benefit the association, its depositors, and the SAIF

or BIF, as the case may be.

(f) The eligible accountholders, the supplemental eligible accountholders, and the voting members, if any, of the savings association converting pursuant to this subpart shall be granted subscription rights to purchase the stock proposed to be issued by the savings association, in accordance with the rules and regulations of Subpart A of this part, except that such subscription rights may be reduced as follows:

(1) If the regulatory capital of the association is between 0 percent of an association's liabilities and one-third of its regulatory capital requirement under applicable law and regulations of the Office thereunder, such subscription rights may be reduced to an amount between 0 percent and 20 percent of the total offering, such percentage to be determined on a sliding scale on the basis of the association's regulatory

(2) If the regulatory capital of the association is more than one-third but not in excess of two-thirds of its regulatory capital requirement under applicable law and regulations of the

Office thereunder, subscription rights may be reduced to an amount between 20 percent and 50 percent of the total offering, such percentage to be determined on a sliding scale on the basis of the association's regulatory

capital; and

(3) If the regulatory capital of the association is more than two-thirds of its regulatory capital requirement but not in excess of the association's regulatory capital requirement, subscription rights may be reduced to an amount between 50 percent and 100 percent of the total offering, such percentage to be determined on a sliding scale on the basis of the association's regulatory capital. Regulatory capital for purposes of this paragraph shall be computed in accordance with generally accepted accounting principles.

(g) An acquiror of a controlling

(g) An acquiror of a controlling interest in an association undertaking a modified conversion shall pay a control premium in such an amount and in such form determined to be acceptable by the

Office.

(h) For three years following the date of completion of a modified conversion, any controlling shareholder or the converted association may not acquire shares from minority shareholders without first obtaining prior approval by the Office of such purchases and offering fair value, as determined through an independent appraisal which takes into consideration the value of the association on a "going concern" basis including, but not limited to, an evaluation of historical earnings, future prospects for earnings, financial conditions, any arms' length trades in the stock, net asset value, dividends record, investment value, and book

# § 563b.39 Application for modified conversion.

A savings association may apply for the Office's approval of a modified conversion pursuant to this subpart by filing in accordance with the procedures specified in § 563b.8 of this part an application which includes the following information and documents:

(a) A plan of conversion adopted by the board of directors of the association, which shall contain, at a minimum the name and address of the savings association; the names, addresses, dates and places of birth, and social security numbers of the known proposed purchasers of conversion stock and their relationship to the savings association; the method of stock sale; the title, perunit par value, number, and per-unit and aggregate offering price of shares of conversion stock to be authorized and issued; the number and percentage of

shares of conversion stock to be purchased by each investor, the aggregate number and percentage of shares of conversion stock to be purchased by directors, officers or their affiliates and associates (as defined in § 563b.2(a) of this part); the form of consideration to be paid for the conversion stock; and certified copies of all resolutions of the board of directors relating to the plan.

(b) A copy of any agreements between the savings association and the proposed conversion stock purchasers.

(c) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences to the savings association arising from the conversion, or an Internal Revenue Service ruling that the transaction qualifies as a tax-

free reorganization.

(d) A business plan acceptable to the District Director and the Senior Deputy Director for Supervision (Operations), which shall contain a description of the proposed operating policies of the savings association following the conversion, including a statement as to how the conversion proceeds will be used, and a projection of the savings association's results of operations for the three-year period following completion of the conversion. The savings association shall specify the assumptions on which its projections are based.

(e) A Holding Company Act application or a Control Act notice for each proposed conversion stock purchaser as required by § 574.3 of this subchapter, where applicable, and the prior conduct certification required by Memorandum SP-51 issued by the Senior Deputy Director for Supervision (Operations).

(f) The proposed charter and bylaws of the converted savings association.

(g) The proposed stock certificate form.

(h) A description of all existing and proposed employment contracts, if applicable.

(i) All filings required under the securities offering rules of 12 CFR Parts 563b and 563g.

(j) A subordinated debt application, if

applicable.

(k) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of the applications for Federal Home Loan Bank membership and FDIC insurance of accounts, if applicable.

(1) An opinion of an independent certified public accountant regarding the appropriateness of the accounting treatment for the transaction and the conformity of such accounting treatment to generally accepted accounting principles and Memorandum No. R-55 of the Senior Deputy Director for Supervision (Operations).

(m) Information to support the value of any non-cash assets to be contributed to the savings association in connection with the modified conversion.

Appraisals must be acceptable to the Office and, in the case of real estate assets, must meet the standards of Memorandum No. R-41c of the Senior Deputy Director for Supervision (Operations).

(n) A description of the estimated expenses of the modified conversion to

the savings association.

 (o) An audited balance sheet:
 (i) Prepared in accordance with generally accepted accounting principles as of a date within 90 days of the date of submission of the conversion application;

(ii) Prepared by an auditor and in the form of an audit report, both of which meet the requirements of Article 2 of Regulation S-X, 17 CFR 210.2; and

- (iii) Which reflects a balance in retained earnings in an amount less than the association's regulatory capital requirement calculated under applicable law and regulations of the Office thereunder.
- (p) An independent appraisal meeting the requirements of § 563b.7 of this part which:
- Describes the amount of capital that the association could be expected to raise in standard conversion stock offering; and
- (2) Supports the control premium proposed to be paid in the modified conversion.

(q) Pro forma financial statements which demonstrate that:

(1) As a result of an infusion of the amount of capital that could be expected to be raised in a standard conversion, the association would not have an amount of stockholders' equity at least equal to the association's required level of regulatory capital under applicable law and regulations of the Office thereunder; and

(2) As a result of the capital infusion proposed in the modified conversion, the amount of stockholders' equity would at least equal the level of the association's required regulatory capital under applicable law and regulations of the

Office thereunder.

(r) An opinion of independent counsel that the modified conversion of a statechartered savings association to state stock form is authorized under applicable state law, if applicable.

(s) A specific description of any of the features of the savings association's

application that do not conform to the

requirements of this subpart.

(t) A specific description of and detailed justification for any waivers or supervisory forbearances that are requested as part of the modified conversion.

#### § 563b.40 Sale of stock.

(a) General. No offer to sell securities of an applicant pursuant to a plan of modified conversion may be made prior to approval by the Office of the application for conversion. No sale of securities may be made except by means of a final offering circular which has been declared effective by the Office.

(b) Delegation. The Director of the Office delegates to the Chief Counsel or his or her designee the authority to declare a final offering circular effective.

#### § 563b.41 Procedural requirements.

(a) Filing of modified conversion application. A savings association seeking to convert pursuant to this subpart shall file an original and one copy of its modified conversion application containing the information and documents specified in § 563b.39 of this subpart with the Chief Counsel's Office, Corporate and Securities Division, with one copy each to the Senior Deputy Director for Supervision (Operations) and to the District Director. The application shall be deemed to be filed on the date received by the Corporate and Securities Division.

(b) Incomplete application. An application for modified stock conversion that does not contain all of the applicable information and documents specified in § 563b.39 of this part shall constitute an incomplete application, and shall not be approved pending the filing of a complete

application.

(c) The Director of the Office delegates to the Chief Counsel or his or her designee the authority to approve applications for modified conversions except in those applications presenting a significant issue of law or policy, and to exercise the authority of the Office pursuant to this subpart.

(d) Termination or amendment of charter. (1) Upon the Office's approval of a plan of modified stock conversion of a state-chartered savings association or a federally-chartered savings association which is converting to a state-chartered stock savings association, the mutual charter of such savings association shall terminate upon issuance to it of a stock charter under the laws of the state in which its home office is located. If such converting savings association is a federally-

chartered savings association, its federal charter shall be surrendered promptly to the Office for cancellation. A savings association converting to a state-chartered stock savings association shall promptly file with the Office a copy of the stock charter issued to it.

(2) A mutual savings association converting to a federally-chartered stock savings association shall apply to amend its charter and bylaws to read in a form consistent with Part 552 of this chapter. The effective date of such amendment shall be stated in the Office's order approving the conversion.

(3) The corporate existence of a mutual savings association converting to a federally-chartered stock savings association shall not terminate, but the converted association shall be deemed to be a continuation of the association so converted. In the case of a federal or state-chartered mutual savings association converting to a statechartered stock savings association, unless state law otherwise prescribes, the corporate existence of the converting mutual savings association shall similarly not terminate and the converted savings association shall be deemed to be a continuation of the savings association so converted.

#### Subpart E-Forms

# § 563b.100 Form AC—Application for Conversion.

#### Form AC

[Facing Sheet]

## OFFICE OF THRIFT SUPERVISION

1700 G Street, N.W., Washington, D.C. 20552 Application for Conversion

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code) Date of Application—

#### **General Instructions**

#### A. Rules as to Use of Form AC

Form AC shall be used by any savings association seeking approval by the Office of conversion from the mutual to the stock form of organization pursuant to Part 563b of the Rules and Regulations Applicable to All Savings Associations.

## B. Application of Rules and Regulations

Attention is directed to § 563b.8. That section contains general requirements regarding preparation and filing of this Form. The definitions in § 563b.2 also should be noted.

#### Item 1. Form of Application

Set forth an application for approval of the plan of conversion in the following form with the names and titles of the officers and directors signing the application indicated below their signatures:

The undersigned hereby makes application for approval to convert into a stock association, and submits herewith a statement of its proposed plan of conversion and other information and exhibits as required by Part 563b of the Rules and Regulations Applicable to All Savings Associations.

In submitting this application the applicant understands and agrees that, if further examinations or appraisals, or both, are required by the Office, they will be conducted by, or as approved by, the Office at the expense of the applicant; and applicant will pay the costs thereof as computed by the Office.

This application has been approved by at least two-thirds of the board of directors of the applicant. In accordance with § 563b.8(e)(4) of the Rules and Regulations Applicable to All Savings Associations, by the filing of this application, the applicant by its duly authorized representative, the undersigned officers and each member of the applicant's board of directors severally represent, except to the extent otherwise provided in said section: (1) That each such person has read this application; (2) that in the opinion of each such person, he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that this application complies to the best of his or her knowledge and belief with the applicable requirements of Part 563b of the Rules and Regulations Applicable to All Savings Associations and forms thereunder; and (3) that each such person holds such informed opinion.

Attest: Applicant -

(Duly Authorized Representative)

(Principal Executive Officer)

(Principal Financial Officer)

(Principal Accounting Officer)

(Director)

(Director)

(Director)

(Director)

(Director)

(Signatures of at least two-thirds of the Board of Directors)

Item 2. Plan of Conversion

Furnish the complete formal written plan adopted by the board of directors for conversion of the applicant to the stock form of organization. The terms of the plan submitted pursuant to this Item will be a basis for the Office's approval and the plan as approved will be distributed as an attachment to the proxy statement and the offering circular.

Item 3. Proxy Statement and Offering Circular

Furnish preliminary copies of the proxy statement and offering circular. The proxy statement and offering circular should be prepared in accordance with Forms PS and OC, respectively.

#### Item 4. Form of Proxy

Furnish preliminary copies of the form of proxy to be distributed to association members by the management.

Item 5. Sequence and Timing of the Plan

Set forth the expected chronological order of the events connected with the plan of conversion beginning with the filing of this application through completion of the sale of all the capital stock under the plan. Indicate the expected timing of any requisite approvals by State or other regulatory authorities (other than the Office). Indicate the proposed timing of all aspects of the subscription offering. If there will be an underwritten public or direct community marketing of the applicant's securities as part of the plan of conversion, indicate the proposed timing of all aspects of such offering.

#### Item 6. Record Dates

If the applicant's plan of conversion contains an eligibility record date substantially earlier than 90 days prior to the date of adoption of the plan of conversion by the board of directors, state the reason for the selection of such earlier date.

Indicate the circumstances that will require the use of a supplemental eligibility record

date.

Item 7. Expenses Incident to the Conversion

Provide in substantially the tabular form indicated below the estimated expense of the conversion to the applicant.

Legal		
Postage and Mailir	g	
Printing		
Escrow or Agent F	ees	
Underwriting Fees		
Appraisal Fees		
Transfer Agent Fe	98	
Auditing and Acco	unting	
Proxy Solicitation I	ees	
Advertising		
Other Expenses	***************************************	
Total		
11.000 11.000 10.000		

Instructions. 1. The applicant may exclude costs represented by salaries and wages of regular employees and officers; if a statement to that effect is made.

The cost of solicitation by specially engaged employees or paid solicitors under paragraph (b) of Item 3 of Form PS shall be stated under "Proxy Solicitation Fees" in this Item.

2. If the applicant has any category of expense exceeding \$10,000 which is not specified in this Item, such expense shall be itemized rather than including it under the category "Other Expenses". 3. If the solicitation is conducted other than by management of the applicant, the information required in this Item shall be provided with respect to the cost of such solicitation.

#### Item 8. Indemnification

State the general effect of any charter provisions, bylaw, contract, arrangement, statute, or regulation to be in effect during or after the conversion under which any underwriter, appraiser, lawyer, accountant or expert, or director or officer of the applicant will be insured or indemnified in any manner against any liability which he or she may incur in his or her capacity as such.

Item 9. Federally Chartered Stock Savings Associations

State whether the converting savings association is applying to amend its charter and bylaws to read in a form consistent with Part 552 of the Rules and Regulations Applicable to Federal Savings Associations.

#### Exhibits

The following exhibits shall be attached to this Form.

Exhibit 1. Resolution of Board of Directors

Set forth a certified copy or copies of a resolution or resolutions of the board of directors: (1) Adopting the plan of conversion filed with this application; (2) authorizing the filing of this application; and (3) applying for continued insurance of accounts by the Federal Deposit Insurance Corporation and continued membership in the appropriate Federal Home Loan Bank. The action adopting the plan of conversion and authorizing the filing of this application must be approved by two-thirds of the board of directors.

Exhibit 2. Copies of Documents, Contracts and Agreements

Furnish the following documents, contracts and agreements:

(a) Proposed certificates for capital stock and any other securities to be issued;

(b) Proposed order forms with respect to the subscription rights;

(c) Proposed charter and bylaws of the applicant to take effect upon conversion including, if applicable, the optional charter provision provided for in § 563b.3(i)(7);

(d) Any proposed stock option plan and form of stock option agreement;

(e) Any proposed management employment contracts;

(f) Any contract described in response to Item 6 of Form PS;

(g) Contracts or agreements with paid solicitors described in response to Item 3(b) of Form PS;

(h) Any material loan agreements relating to borrowing by the applicant other than from a Federal Home Loan Bank and other than subordinated debt securities approved by the Office;

(i) Any appraisal agreement or proposed agreement, underwriting contracts or agreements among underwriters;

(j) Any charter amendment filed for the purpose of converting a Federal mutual association to a Federal stock association;

(k) Any proposed contracts or agreements among members of a group regarding the

purchase of unsubscribed shares pursuant to \$ 563b.3(d)(2);

(I) Any required undertaking or affidavits by officers or directors purchasing shares in the conversion that they are acting independently;

(m) Any documents referred to in the answer to Item 8 of Form AC;

(n) Any trustee agreements or indentures; (o) Any agreements for the making of

markets or the listing on exchanges of the stock of the converted savings association. Documents, contracts and agreements which are furnished in proposed form under this exhibit shall be furnished in final form immediately after the meeting of association members to consider the plan of conversion, except for documents which by their nature cannot be practically expected until a later time required by subdivisions (i) and (k) in which case they shall be furnished in substantially final form.

#### Exhibit 3. Opinion of Counsel

Furnish an opinion of counsel for the applicant regarding each of the following matters:

 (a) The legal sufficiency of the applicant's proposed certificates and order forms for capital stock and any other securities;

(b) State law requirements applicable to the plan of conversion including citations to applicable State law and whether such requirements will be fulfilled by the plan;

(c) The legal sufficiency of the applicant's bylaws:

(d) The continuation of insurance of the applicant's accounts by the Federal Deposit Insurance Corporation after conversion;

(e) The type and extent of each class of voting rights in the applicant after conversion, including any requirement of State law that savings account holders or borrowers have voting rights in the converted savings association;

(f) A certification that the proposed charter and bylaws conform to Part 552 of this subchapter or if not a statement to that effect.

Matters listed in subdivisions (b), (c) and (e) of this Exhibit only apply to an applicant which is converting to a State-chartered stock association.

Exhibit 4. Federal and State Tax Opinions or Ruling

(a) Furnish an opinion of the applicant's tax advisor or an Internal Revenue ruling as to the Federal income tax consequences of the plan of conversion to the applicant and to the various account holders who receive nontransferable subscription rights to purchase capital stock.

Instruction. The Office recommends that each applicant obtain a ruling from the Internal Revenue Service regarding the Federal income tax consequences of the plan of conversion. The Office may require that such a ruling be obtained if the applicant's plan of conversion is not substantially similar to plans of conversion which have received favorable rulings. The Office may also require that such a ruling be obtained if the applicant's plan of conversion contains novel provisions or there is otherwise a question as

to the Federal income tax consequences of

the plan.

(b) Furnish an opinion of the applicant's tax advisor or, if applicable, a ruling from the appropriate state taxing authority to any tax consequences of the plan of conversion under the laws of the State in which the applicant will be located upon conversion. Such opinion should relate to the applicant and to eligible account holders.

#### Exhibit 5. Valuation Materials

Furnish any materials required to be filed by § 563b.7 regarding the valuation to the applicant's capital stock. An applicant is not required to file such materials if the offering of capital stock will not commence before the meeting of association members to vote on the plan of conversion.

#### Exhibit 6. Notice to Members

Furnish the notices to the applicant's members required by § 563b.4(a) and (b).

### Exhibit 7. Other Materials

(a) If information required by an appropriate form is not given for the reasons specified in § 563b.8(j), furnish the statement required for each such omission by § 563b.8(j)(2).

(b) Furnish all consents required to be filed

by § 563b.8(p) and (q).

(c) If applicable, furnish the statement required by Item 5 of Form PS regarding events which occurred within the last ten years to directors of the applicant.

(d) Furnish any powers of attorney employed pursuant to § 563b.8(e)(3).

(e) Furnish the cross reference sheet

referred to in § 563b.8(g).

(f) If the applicant wishes to request a waiver of compliance in accordance with \$ 563b.1(c), furnish the materials required by \$ 563b.1(c)(2).

#### § 563b.101 Form PS-Proxy Statements.

Form PS

[Facing Sheet]

#### OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, DC 20552 Proxy Statement

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

#### **Proxy Statement Form**

Index to Items

Item 1. Notice of Meeting Item 2. Revocability of Proxy

Item 3. Persons Making Solicitation

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Item 8. Description of the Applicant's Plan
of Conversion

Item 9. Description of Capital Stock

Item 10. Capitalization

Item 11. Use of New Capital

Item 12. New Charter, Bylaws or Other Documents

Item 13. Other Matters

Item 14. Financial Statements

Item 15. Consents of Experts and Reports

Item 16. Attachments

#### Information Required in Conversion Proxy Statement

Notes

1. Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or relationships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

2. The proxy statement shall include such information which the Chief Counsel or the Deputy Chief Counsel for Securities and Corporate Structure by interpretative release or otherwise has deemed necessary to comply with items of this Form PS.

#### Item 1. Notice of Meeting

The cover page of the proxy statement shall give notice of the meeting of the association members called by the board of directors to act upon the conversion. The cover page shall include the date, time, and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for association members entitled to vote at the meeting, the date of the statement, and the full address, ZIP code and telephone number of the applicant.

If the applicant intends to use previously obtained proxies at the meeting in accordance with § 563b.5(d)(4), the notice of the meeting shall include the following bold-

face legend:

THE ASSOCIATION MAY USE YOUR PREVIOUSLY-EXECUTED PROXIES TO VOTE FOR THE PLAN OF CONVERSION IN THE EVENT YOU DO NOT EXECUTE ANOTHER PROXY FOR THIS MEETING, ATTEND AND VOTE IN PERSON, OR OTHERWISE REVOKE YOUR PREVIOUSLY-EXECUTED PROXIES.

Item 2. Revocability of Proxy

State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter, bylaw or applicable Federal or State law requirements otherwise restricting voting by proxy. State that the proxy is solicited for that meeting, and any adjournment thereof, and will not be used for any other meeting. (See also § 563b.5(d)(3)).

Item 3. Persons Making the Solicitation

(a) State whether the solicitation is made by the management of the applicant. Give the name of any director of the applicant who has informed the management in writing that he or she intends to oppose any action intended to be taken by the management and indicate the action which he or she intends to

(b) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state the material features of any contract or arrangement for such solicitation and identify the parties.

(c) If the solicitation is made otherwise than by the management of the applicant, so state and give the names of the persons by whom and on whose behalf it is made. Any such solicitation normally need not respond to Items 5 through 16, but must include such information as to make such solicitations comply with § 563b.5(g)(1).

Item 4. Voting Rights and Vote Required for Approval

(a) Describe briefly the voting rights of each class of association members, state the approximate total number of votes entitled to be cast at the meeting, and the approximate number of votes to which each class is entitled. Discuss the voting rights of beneficiaries of accounts held in a fiduciary capacity such as IRA accounts.

(b) As part of the description give the date of record for association members entitled to

vote at the meeting.

(c) As to each matter which will be submitted to a vote of association members, state the vote required for its approval.

(d) If the applicant intends to use previously executed proxies to vote on the plan of conversion in accordance with § 563b.5(d)(4), discuss how such proxies were obtained, the circumstances in which such proxies may be used, and how such proxies will be voted.

#### Item 5. Directors and Executive Officers

(a) Furnish the information regarding directors and executive officers and certain relationships and related transactions required to be disclosed in a registration or proxy statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. In particular, see Items 401 and 404 of Regulation S-K, 17 CFR 229.401 and 404, and Item 6 of Regulation 14A, 17 CFR 240.14a-101. Unless the context otherwise requires, the words "registrant" and "issuer" in those regulations shall refer to the applicant and the word "Commission" shall refer to the Office.

(b) State whether control of the applicant has been exercised through the use of proxies and the nature of such control.

## Item 6. Management remuneration

Furnish the information regarding management remuneration required to be disclosed in a registration or proxy statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. In particular, see Item 402 of Regulation S-K, 17 CFR 229.402, and Item 7 of Regulation 14A, 17 CFR 240.14a-101. Unless the context otherwise requires, the words "registrant" and "Commission" in those regulations shall refer to the applicant and to the Office, respectively.

Item 7. Business of the applicant

(a) Narrative description of business. (1) Discuss briefly the organizational history of the applicant, including the year of organization, the identity of the chartering authority, and any material charter conversions.

(2) Describe the business conducted and intended to be conducted by the applicant and its subsidiaries. This should include a description of the general development of the business of the applicant and any predecessor(s) during the past five years, or such shorter period as the applicant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business. Any material changes in the mode of conducting the business should be discussed.

(3) Consideration should be given to inclusion of a description of the applicant's historical practices, including the average remaining term to maturity of its portfolio of mortgage loans, and present intention regarding the making of loans, whether real estate or other, the nature of security received, the terms of loans, whether carrying fixed or variable interest rates, and the retention of loans or their resale in secondary mortgage markets. Historical description might require a general identification of the magnitude of various activities.

(4) Also explain any significant impact to the association as a result of any material acquisitions.

(b) Selected financial data. Furnish in comparative columnar form a summary of selected financial data for the applicant for:

(1) Each of the last five fiscal years of the applicant (or for the life of the applicant and its predecessors, if less); and

(2) Any additional fiscal years necessary to keep the summary from being misleading.

Instructions. 1. The purpose of the summary of selected financial data shall be to supply in convenient and readable format selected data which highlight significant trends in the applicant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the applicant's business, the following items, as a minimum, shall be included in the summary: Total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total savings; total borrowings; total regulatory capital; and total number of customer service facilities indicating the number which provide full service. Applicants may include additional items which they believe would enhance understanding and highlight trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion of, factors such as accounting changes, business combinations, or dispositions of business operations that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where those matters might cause the data reflected not to be indicative of the applicant's future financial condition or results of operations.

3. Those applicants which elect to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 89 ("SFAS 89") "Financial Reporting and Changing Prices," may combine such information with the selected financial data appearing pursuant to this Item.

 All references to the applicant in the summary and in these instructions shall mean the applicant end its consolidated subsidiaries.

5. If interim-period financial statements are included, or are required to be included by Item 14, applicants should update the selected financial data for the interim period to reflect any material change in the trends indicated; where such updating information is necessary, applicants shall provide the information on a comparative basis unless not necessary to an understanding of the updating information.

(c) Management's discussion and analysis of financial condition and results of operations. (1) Discuss applicant's financial condition, changes in financial condition, and results of operations. The discussion shall provide information as specified in paragraphs (i), (ii), and (iii) of this paragraph with respect to liquidity, capital resources and results of operations and also should provide all other information which the applicant believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations. Significant business combinations should be discussed. Discussion of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the applicant's judgment a discussion of subdivisions of the applicant's business would be appropriate to an understanding of the business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the applicant as a whole.

(i) Liquidity. Identify any known trends or any known demands, commitments, events, or uncertainties which will result in or which are reasonably likely to result in the applicant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the applicant has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. Comment on maturity imbalances between assets and liabilities and planned activities in the secondary mortgage market.

(ii) Committed resources. (A) Describe the applicant's material commitments for loan fundings or other expenditures as of the end of the latest fiscal period and indicate the general purpose of the commitments and the anticipated source of funds needed to fulfill the commitments.

(B) Describe any known material trends, favorable or unfavorable, in the applicant's committed resources. Indicate any expected material changes in the mix and the relative cost of the resources. This discussion should consider changes between savings, equity, debt, and any off-balance-sheet financing arrangements. (iii) Results of operations. (A) Describe any unusual or infrequent events or transactions or any significant economic charges that materially affected the amount or reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expenses which, in the applicant's judgment, should be described in order to understand the applicant's results of operations.

(B) Describe any known trends or uncertainties which have had, or which the applicant reasonably expects will have, a materially favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the applicant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of money or interest rates) the change in the relationship should be disclosed.

(C) To the extent that the financial statements disclose material increases in interest expense, provide a narrative discussion of the extent to which the increases are attributable to increases in rates or to increases in volume.

(D) For the three most recent fiscal years of the applicant, or for those fiscal years in which the applicant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the applicant's revenues and on income from continuing operations.

(E) For the most recent financial statement presented, discuss any unusual risk characteristics in the assets of the applicant. This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in amounts of nonaccrual, past due, restructured, and potential problem loans (see Securities and Exchange Commission's Securities Act Industry Guide 3. Section III C).

Industry Guide 3, Section III C).

Instructions. 1. The applicant's discussion and analysis shall be of the financial statements and of other statistical data which the applicant believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-to-year comparisons or other formats which in the applicant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in Item 7(b) above may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the applicant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this Item 7(c) need only include that which is available to the applicant without undue effort or expense and which

does not clearly appear in the applicant's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the applicant's business as a whole; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Applicants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the

consolidated financial statements.
5. The term "liquidity" as used in paragraph (c)(1)(i) of this Item 7 refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the applicant should indicate those balance sheet conditions or income or cash flow items which the applicant believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a longterm and short-term basis. The issue of liquidity should be discussed in the context of the applicant's own business or businesses. Liquidity does not necessarily mean "liquid assets" as defined in the liquidity regulations of the Office.

6. Applicants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will have an impact upon future operating results, such as known future increases in rates or other costs. This latter data is required to be disclosed. Any forward-looking information supplied is hereby expressly covered by the safe-harbor rule for projections, § 563d.3b-6, under the circumstances specified in that

7. Applicants which elect to provide narrative explanations of supplementary information disclosed in accordance with SFAS 89 may combine the explanations with their discussion and analysis required pursuant to this provision or they may supply the information separately. If the information is combined, it shall be located in reasonable proximity to the discussion and analysis. If the information is not combined, the discussion of the impact of inflation otherwise required by this item may be omitted if there is an appropriate cross reference to the explanations provided pursuant to SFAS 89.

8. Applicants which elect not to provide explanations of supplementary information disclosed in accordance with SFAS 89 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 89 is encouraged, all that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

9. All references to the applicant in the discussion and in these instructions shall mean the applicant and its consolidated

subsidiaries.

(2) If interim-period financial statements are included or are required to be included by Item 14, a management's discussion and analysis of the financial condition and results of operations shall be provided to enable the reader to assess material changes in financial condition and results of operations between the periods specified in (i) and (ii) below. The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (c)(1) of this Item 7, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(i) Material changes in financial condition. Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material change in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the

discretion of the applicant.

(ii) Material changes in results of operations. Discuss any material changes in the applicant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the applicant is required to or has elected to provide an income statement for the most recent fiscal year quarter, the discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the applicant has elected to provide an income statement for the 12month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

Instructions. 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to paragraph (c)(2) and the discussion of the full fiscal year information shall be prepared pursuant to paragraph (c)(1) of this Item 7. Such discussions may be combined.

2. The discussion and analysis required by this paragraph (c)(2) is required to focus only on material changes. Where the interim financial statements reveal material change from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; however, if the causes for a change in one line item also relate to other line items, no repetition is required. Applicants need not recite the amounts of changes from period to period which are readily computable from the financial statements. This discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's interim financial statements.

3. The applicant's discussion of material changes in results of operations should identify any significant elements of the applicant's income or loss from continuing operations which do not arise from or are not necessarily representative of the applicant's

ongoing business.

4. Applicants are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe-harbor rule for projections, § 563d.3b-6, under the circumstances

specified in that rule.

(d) Lending activities. (1) Briefly describe the applicable Federal and State restrictions on the lending activities of the applicant, including applicable laws affecting mortgage loan interest rates. Also briefly describe the applicant's general policy concerning loan-tovalue ratios; customary methods of obtaining loan originations, such as the use of loan consultants; approval of properties as security for loans; the use of a loan committee, if any; and policies as to requiring title, fire, and casualty insurance on security properties. Indicate the applicant's general future intentions with respect to activities in secondary mortgage markets, including transactions with the Federal Home Loan Mortgage Corporation or mortgage bankers. If significant, indicate loan service fee income as a percentage of net interest income for the years required by Item 14(b).

(2) As to the lending area of the applicant, describe briefly (i) the lending area restrictions, if any, applicable to the applicant, (ii) the areas in which the applicant normally lends, and (iii) any material loan concentration areas of the applicant. The descriptions may include maps illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the applicant's loan

concentrations are located, if practicable. (3) Describe briefly the general long-term nature of investment in mortgage loans and the consequent effect upon the earnings spread of savings associations. State the normal maturity of loans made by the applicant on the security of single-family dwellings and furnish an estimate as to the average length of time the loans are outstanding.

(4) For each of the periods required by Item 14(b), set forth in tabular form, excluding fees which are not considered adjustments of

yield, the following:
(i) Average yield during the period on: (A) Loan portfolio, (B) investment portfolio, (C) other interest-earning assets, and (D) all interest earning assets. Average yield should be computed on no greater than a monthly basis.

(ii) Average raté paid during the period on: (A) Deposits, (B) borrowings and Federal Home Loan Bank advances, (C) other interest-bearing liabilities, (D) all interestbearing liabilities ((A), (B), and (C)). Average rate paid should be computed on no greater than a monthly basis.

(iii) Weighted-average yield at end of the latest required period, for the items in (i) and

(ii) above.

(iv) The net yield on average interestearning assets (net interest earnings divided by average interest-earning assets, with net interest earnings equaling the difference between the dollar amount of interest earned and paid). Average interest-earning assets should be determined on an interval no more

frequent than monthly.

(v) For each of the periods required by Item 14(b), set forth in tabular form: (A) The dollar amount of change in interest income and (B) the dollar amount of change in interest expense. The changes should be segregated for each major category of interest-earning asset and interest-bearing liability (as stated in (i) and (ii) above) into amounts attributable to (1) changes in volume (change in volume multiplied by old rate), (2) changes in rates (change in rate multiplied by old volume), and (3) changes in rate-volume (change in rate multiplied by the change in volume). The rate/volume variances should be allocated on a consistent basis between rate and volume variance and the basis of allocation disclosed in a note to the table.

(5) For each of the periods required by Item

14(b), present the following:

(i) Return on assets (net income divided by average total assets).

(ii) Return on equity (net income divided by average equity).

(iii) Equity-to-assets ratio (average equity divided by average total assets).

Instructions. Applicants should supply any additional ratios which they deem necessary

to explain their operations.

(6) As of the end of the latest fiscal year reported on, present separately the amounts of loans in each category required by balance sheet Item 7(b). § 563c.102, which are due: (i) In each of the three years following the balance sheet, (ii) after three through five years, (iii) after five through ten years, (iv) after ten through fifteen years, and (v) after fifteen years.

In addition, present separately the total amount of all such loans due after one year which have predetermined interest rates and floating or adjustable interest rates.

Instructions. 1. Scheduled principal repayments should be reported in the maturity category in which the payment is

2. Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

3. Determinations of maturities should be based upon contract terms. However, such terms may vary due to the applicant's "rollover policy," in which case the maturity should be revised as appropriate and the rollover pelicy should be briefly discussed.

(7) Describe briefly the risk elements within the loan and investment portfolios including the applicant's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operation required by Item 14(b)(1) and as of the date of the latest statement of financial condition required by Item 14(a), set forth in tabular form the amounts and categories of nonaccrual, past due, restructured, and potential problem loans (see Securities and Exchange Commission's Securities Act Industry Guide 3, section III C) and the ratio of such loans to total assets. Where the amount of real estate that has been in substance foreclosed, acquired by foreclosure, or by deed in lieu thereof is significant, include a brief description of the major properties and a statement as to the applicant's probable losses, if any, upon disposition of such properties.

(e) Savings activities. (1) State whether the maximum rate of interest which the applicant may pay is established by regulatory authorities. State that, in the event of liquidation of the applicant after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to shareholders. Also indicate the percentage of total savings accounts which are from out-of-state sources, if such total is

significant.

[2] Set forth in tabular form the amounts of time deposit accounts by categories of interest rates as of the dates of each balance sheet filed. Each interest-rate category should not be more than 200 basis points. As of the date of the latest balance sheet, set forth, in tabular form for each interest-rate category. the amounts of savings maturing during each of the three years following the balance sheet date and the total maturing thereafter.
[3] Disclose the weighted-average rate and

general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption 14, § 563c.102, along with the maximum amount of borrowings in each category outstanding at any month-end during each period for which an end-of-period balance sheet is required. In addition, disclose the approximate average short-term borrowings outstanding during the period and the approximate weightedaverage interest rate (and a brief description of the means used to compute such average) for such aggregate short-term borrowings. The disclosure required by this paragraph (3) need not be furnished as regards borrowings in each particular category when the aggregate amount of such borrowings at the balance sheet date does not exceed one percent of assets at that date. Notwithstanding this reporting threshold, if the weighted average of such borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of such borrowings at year-end, the disclosure called

for by this paragraph (3) should be furnished. This information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders equity at the end of the period.

(f) Federal regulation. Describe briefly, to the extent not otherwise covered by other items, Federal regulation of the applicant and the conduct of its operations. In particular, describe briefly the insurance of accounts and the general regulatory authority of the Federal Deposit Insurance Corporation, the general regulatory authority of the Office, and Federal regulatory capital requirements, the results of failure to meet those requirements, and the applicant's regulatory capital position in relation to those requirements. Also describe the assessment authority and requirements of the Federal Deposit Insurance Corporation, the Office. the Financing Corporation, and the Resolution Funding Corporation. In addition, describe briefly applicable liquidity requirements under section 4A of the Home Owners' Loan Act, as amended, the regulations thereunder, and State law. State the applicant's position with respect to those requirements.

(g) Federal Home Loan Bank System. Describe briefly the Federal Home Loan Bank System and state that the applicant is a member. Such description shall include

(1) Limitations on borrowings,

(2) Recent loan policies of the applicant's Federal Home Loan Bank and current interest rates, and

(3) Federal Home Loan Bank stock purchase requirements and the applicant's position with respect to those requirements.

(h) State savings association law. If the applicant is converting to a State-chartered stock association, describe briefly applicable provisions of State law which have a material effect on the business of the

(i) Federal and State taxation. Describe briefly the Federal income tax laws applicable to the applicant including:

1) Permissible bad debt reserves; (2) The applicant's position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under Item 14(a);

(3) Future increases in the effective income

(4) The date through which the applicant's Federal income tax returns have been audited by the Internal Revenue Service; and

(5) The tax effect to the applicant of the payment of cash dividends on capital stock of the applicant after conversion. Also describe briefly the State taxation of the applicant.

(j) Competition. Describe the material sources of competition for savings associations generally and indicate to the extent practicable the applicant's position in its principal lending and savings markets.

Instruction. In answering Item 7(j) give to the extent known the association's savings and mortgage product market shares by county in its geographic market. Also indicate its rank and any material changes or trends in its competitive standing.

(k) Office and other material properties. (1) Furnish the location of the applicant's home office and each existing and approved branch office and other office facilities (such as mobile or satellite offices). State the total net book value of all such offices as of the date of the latest statement of financial condition required by Item 14(a). If any such office is leased, state the expiration dates of such

(2) Describe briefly undeveloped land owned by the applicant, including location. net book value, and prospective use and holding period. If the applicant or a subsidiary owns or leases electronic data processing equipment principally for its own use, describe briefly such equipment indicating net book value if owned or the

principal lease terms if leased.

(1) Employees. State the number of persons employed full time by the applicant including executive officers listed under Item 5. State whether employees are represented by a collective bargaining group and whether the applicant's relations with its employees is satisfactory. Summarize briefly any loans, profit sharing, retirement, medical, hospitalization or other remuneration plans provided for employees not already included pursuant to Item 6.

(m) Service corporations. Describe briefly the applicant's investment in any subsidiary and the major lines of business (including any joint ventures) of the subsidiary which

are material to its operations.

(n) Legal proceedings. Furnish the information regarding legal proceedings required to be disclosed in a registration statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. In particular, see Item 103 of Regulation S-K, 17 CFR 229.103. Unless the context otherwise requires, the word 'registrant" in that regulation shall refer to

the applicant.

(c) Additional information. The Office may upon the request of applicant, and where consistent with the protection of account holders and others, permit the omission of any of the information required by this Item or the furnishing in substitution therefor of appropriate information of comparable character. The Office may also require the furnishing of other information in addition to, or in substitution for, the information required by this Item in any case where such information is necessary or appropriate for an adequate description of the applicant's business done or intended to be done.

Item 8. Description of the Plan of Conversion

(a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this Item: The Office of Thrift Supervision has given approval to the plan of conversion, subject to its approval by association members and the satisfaction of certain other conditions. However, such approval by the Office does not constitute a recommendation or endorsement of the plan by the Office.

(b) The proxy statement shall contain a description of the plan of conversion. Such description shall contain the information required by paragraphs (c) through (j) of this Item and such additional information as may be necessary to accurately describe the material provisions of the plan.

(c) Briefly describe the effects of conversion from a mutual association to a stock association including the following information:

(1) State that savings accounts of the applicant will not be affected by the conversion with respect to such matters as balances in the accounts and the extent of insurance of savings accounts by the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(2) State whether savings and borrowing members of the applicant will continue to have voting rights in the applicant after conversion, and describe any voting rights

they will have:

(3) State the present liquidation rights of account holders and describe the liquidation account to be established and maintained by the applicant, including the conditions under which such account will be paid, the interest of eligible account holders and supplemental eligible account holders in such account and the formula by which such account will be adjusted;

(4) State that the rights and obligations of borrowers from the applicant will not be

changed in any manner;

(5) State that capital stock to be sold by the applicant will not be insured by the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(6) State than none of the assets of the applicant will be distributed in order to effect the conversion other than to pay expenses

incident thereto; and

(7) State briefly the reasons why management is recommending the conversion, including any advantages to the community served by the applicant.

(d) With respect to the subscription rights of members, furnish the following

information:

(1) The formula to be used for determining the subscription rights of account holders to purchase shares pursuant to § 563b.3(c) (2),

(4), and (5);

(2) Any optional provisions included in the plan of conversion pursuant to § 563b.3(d) for the purchase of shares of capital stock, including the purchase priorities, limitation on total purchases, the total number of shares which may be purchased, and the formula for the allocation;

(3) The allocation formulas to be used in the event that there is an oversubscription of shares at any time during the sale of stock under the plan of conversion; and

(4) The use and time of the order forms with respect to the exercise of subscription

(e)(1) Set forth on a per-share basis the estimated public offering price range of the shares of capital stock to be sold pursuant to the plan of conversion, except that an estimated price range is not required to be stated if the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion;

(2) State that the offering price will be the pro forma market value of such shares as determined by the association's management and the underwriter, as the case may be; and

(3) State that all of the shares are required to be sold.

(f) Unless the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion, discuss: (1) The earnings per share of the capital stock to be sold on a pro forma basis as of the most recent year-end and interim period required by Item 14(b): and (2) the book value per share on a pro forma basis as of the most recent year-end and interim period required by Item 14(a).

Instructions: 1. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock and then after giving effect to such proceeds, with all assumptions

used clearly stated.

2. In computing pro forma earnings, the applicant shall use the arithmetic average of the (i) average yield on all interest-earning assets (Item 7(d)(4)(i)(D)) and (ii) average rate paid on deposits (Item 7(d)(4)(ii)(A)).

3. If significant changes in interest rates occur during the periods presented, the Office will consider permitting alternative computations proposed by an applicant that

are properly supported.

4. An appropriate statement should be included which explains that the pro forma data should not be relied upon as indicative of the actual financial position or results of continuing operations that will be experienced by the applicant after its

(g) State the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing or extension of the subscription period. Also, state:

(1) That a maximum subscription price will be set forth in the offering circular used for offering of subscription rights;

(2) That the actual subscription price will

be the public offering price;

(3) That the actual subscription price will not exceed the maximum subscription price shown on the order form; and

(4) That any difference between the maximum and actual subscription prices will be refunded unless the subscribers affirmatively elect to have the difference applied to the purchase of additional shares of capital stock

(h) Furnish the following information:

(1) Describe to the extent practicable the applicant's present intentions with respect to. listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of the capital stock in the

(2) Describe briefly the tax effect of the conversion both to the applicant and to the various classes of account holders receiving nontransferable subscription rights to purchase capital stock in the conversion;

(3) State that the plan of conversion is attached as an exhibit to the proxy statement (or will be made available on request if the summary proxy statement provided for by § 563b.6(c)(2) is being used) and should be consulted for further information.

(i)(1) State whether the plan of conversion provides for unsubscribed capital stock to be offered to the public through underwriters or directly by the converting association. If such is the case, provide the information to the extent known required by Item 8 of Form OC and indicate the estimated timing of the proposed offering.

(2) State whether the plan of conversion provides for the purchase by any person or group of any insignificant residue of shares remaining at the conclusion of the offering.

(j) Furnish the following information in tabular form regarding proposed purchases of capital stock involving directors and officers of the applicant:

(1) State the total number of shares proposed to be purchased by all officers, directors and their associates as a group without naming them.

(2) As to each officer and director named in Item 5(a), name him or her, state his or her position, and the number of shares proposed to be purchased by him or her.

(3) As to any officer, director or associate thereof who proposes to purchase 1 percent or more of the total number of shares of capital stock of the applicant to be outstanding, name him or her, state his or her position, and the number of shares proposed to be purchased by him or her.

(4) With respect to the information required by (1), (2) and (3) above, indicate separately the number of shares proposed to be purchased in each offering category.

Instructions. With respect to the information requested as to associates of officers and directors, such information is required only to the extent known. In a case where such confirmation is not obtainable, only the number of shares which the associate is given subscription rights to purchase need be disclosed.

# Item 9. Description of capital stock

(a) Furnish the information regarding capital stock of the applicant required to be disclosed in a registration statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq. In particular, see Item 202 of Regulation S-K, 17 CFR 229.202. Unless the context otherwise requires, the term "registrant" in that regulation shall refer to the applicant.

(b) An undertaking should be included in the proxy statement that the applicant where practical will use its best efforts to encourage and assist a professional market maker in establishing and maintaining a market for the

establishing and maintaining a market for the capital stock of the applicant.

(c) Outline briefly the trading market that is expected to exist for the capital stock following the conversion including the estimated number of market makers and stockholders, and the anticipated success of the applicant in listing the stock.

Instructions. Any discussion of the listing of the applicant's stock should include the basic requirements that must be met for such listing.

(d) If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include the information regarding the limitations or qualifications necessary to enable investors to understand the rights evidenced by the capital stock.

# Item 10. Capitalization

Set forth in substantially the tabular form indicated below the dollar amounts of the

capitalization of the applicant. Captions below may be modified as appropriate.

	(A) Capitalization as of most recent balance sheet date	(B) Pro forma adjust- ments as a result of conversion	(C) Pro forma capitaliza- tion, after giving effect to the conversion
Deposits FHL bank ad- varces. Other Borrowings Capital stock Preterred stock Paid-In capital Retained earnings: Restrict- ed Unre- stricted			
Total		10000	

Instructions. 1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized, the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the applicant from the sale of its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making the estimate. The total amount and price per share shall be clearly identified as being estimates.

With respect to Column A, the applicant should use the most recent balance sheet date required by Item 14.

#### Item 11. Use of New Capital

State the principal purposes for which the net proceeds to the applicant from the capital stock to be sold are intended to be invested or otherwise used and the approximate amount intended for each such purpose.

Instruction. Details of proposed investments are not to be given. There need be furnished, for example, only a brief statement of any investment or other activity of the applicant which will be affected materially by availability of the proceeds. Examples of such activities may include expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

Item 12. New charter, bylaws, or other documents

Describe briefly any material differences between the provisions of the existing charter, bylaws, and any similar documents of the applicant and those which will take effect after conversion.

Instruction. This Item requires only a brief summary of the provisions which are

pertinent from both an investment standpoint and a voting standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions verbatim; only a succinct resume is required.

#### Item 13. Other Matters

State that the applicant will register its capital stock under section 12(g) of the Securities Exchange Act of 1934, as amended, and that it will not deregister such stock for a period of three years. It should be noted that upon such registration the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act will be applicable.

#### Item 14. Financial Statements

Notes: 1. The following instructions specify the consolidated balance sheets, the consolidated statements of income, the consolidated statements of cash flows, and stockholders' equity required to be included in the proxy statement. Subpart A of part 563c governs the certification, form, and content of such financial statements, including the basis of consolidation.

2. If the applicant has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirement provided it covers a full twelve months' operations and is used consistently.

(a) Consolidated balance sheets. (1) There shall be furnished for the applicant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(2) If the latest balance sheets furnished under (1) of this paragraph are in excess of 135 days prior to the date of the Office's approval of the conversion, there shall be furnished an interim balance sheet as of a date within 135 days of such approval. This interim balance sheet need not be audited.

(b) Consolidated statements of income and cash flows. (1) There shall be furnished for the applicant and its subsidiaries and predecessors consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished, except that for periods prior to July 15, 1988, statements of changes in financial position may be provided in lieu of statements of cash flows.

(2) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and cash flows shall be furnished. The interim financial statements may be unaudited.

(c) Changes in stockholders' equity. An analysis of the changes in each caption of stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be furnished with all significant reconciling items described by appropriate captions.

(d) Financial statements of business acquired or to be acquired. There shall be furnished the information required by 17 CFR 210.3-05 and 210.11-01 to -03 regarding business acquired or to be acquired.

(e) Separate financial statements of subsidiaries not consolidated and 50-percentor less-owned persons. There shall be furnished the information required by 17 CFR 210.3-09 regarding separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.

(f) Filing of other statements in certain cases. The Office may, upon the request of the applicant, and where consistent with the protection of account holders and others, permit the omission of one or more of the statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Office may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of account holders and others.

Item 15. Consents of Experts and Reports

(a) The proxy statement shall briefly describe all consents of experts filed pursuant to § 563b.8(p).

(b) The statement shall contain a report of the independent public accountants who have certified the financial statements and other matters in the statement.

Instruction. The instruction on Item 12 shall apply to paragraph (a) of this Item.

#### Item 16. Attachments

There shall be attached to the proxy statement distributed to association members and others a copy of the applicant's plan of conversion as approved by the Office unless the following procedure is observed. The association may in the alternative set forth in the proxy statement that the plan of conversion will not be provided unless the recipient so requests within a specified period by means of a postage-paid postcard or other written communication.

#### § 563b.102 Form OC-Offering Circulars.

Form OC

[Facing Sheet]

OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, D.C. 20552

Offering Circular

[Exact name of applicant as specified in charter]

(Street address of applicant)

(City, State and Zip Code)

Offering Circular Form

Item 1. Information Required by and Use of

The offering circular shall be dated as of the date of its issuance. The offering circular shall contain substantially the same information required to be included in the proxy statement of the applicant distributed to association members to vote upon the plan of conversion. Information of the type required to be included in the proxy statement may be omitted from the offering circular only to the extent that it is clearly inapplicable. The offering circular may be in 'wrap around" form with the proxy statement attached.

Instructions. 1. The term "offering circular" refers to both the offering circular for the subscription offering and the offering circular for the public offering through an underwriter or the direct community marketing by the converting savings association of the unsubscribed shares, unless otherwise

2. The offering circular shall include such information which the Chief Counsel or Deputy Chief Counsel for Securities and Corporate Structure, by interpretive release or otherwise, has deemed necessary to

comply with this Form OC.

3. An offering circular for the subscription offering in "wrap around" form distributed to association members and other persons who have previously been furnished a copy of the proxy statement need not contain the proxy statement as an attachment provided such offering circular states that a copy of the proxy statement has previously been furnished to such persons and that an additional copy thereof will be furnished promptly upon request to the applicant (with the telephone number and mailing address of the applicant stated).

Item 2. Additional Current Information Required

Each offering circular shall, as of its respective dates of issuance, include, to the extent available, the following additional current information to the extent that such information is not already included in the proxy statement:

(a) Information with respect to the vote of association members upon the plan of conversion and any other proposals considered at the meeting of members.

(b) Information with respect to any recent material developments in the business or affairs of the applicant.

(c) Information with respect to the trading market that is expected to exist for the capital stock following the conversion.

(d) Information, on the outside front cover page, summarizing the results of any separate subscription offering including the number of shares sold to eligible account holders, voting members and others, the price at which the shares were sold, and the number of unsubscribed shares.

(e) The information required by Items 8(e)(1) and 8(f) of Form PS.

(f) Any other information necessary to make such offering circular current, including full financial statements of the applicant within six months prior to the date of issuance of such offering circular. In addition, a subscription offering circular shall contain any more recent financial statements which, at the time of commencement of the subscription offering, it can be determined will be required to be included in an offering circular to be used in the direct community offering or public offering pursuant to this paragraph (f).

Item 3. Statement Required in Offering Circulars

There shall be set forth on the outside cover page of every offering circular the following statement in capital letters printed in bold-face Roman type at least as large as ten-point modern type and at least two points

THESE SHARES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE OFFICE OF THRIFT SUPERVISION NOR HAS SUCH OFFICE PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING CIRCULAR. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL

Item 4. Preliminary Offering Circular

The outside front cover page of any preliminary offering circular shall bear, in red ink, the caption "Preliminary Offering Circular," the date of its issuance, and the following statement printed in type as large as that used generally in the body of such

offering circular.

This offering circular has been filed with the Office of Thrift Supervision, but has not been authorized for use in final form. Information contained herein is subject to completion or amendment. The shares covered hereby may not be sold nor may offers to buy be accepted prior to the time the offering circular is declared effective by the Office of Thrift Supervision. The offering circular shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these shares in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State."

Item 5. Information with Respect to Exercise of Subscription Rights

Any offering circular which is required to be delivered to subscribers shall describe all material terms of the offering relating to the exercise of subscription rights to the extent that such description is not already in the proxy statement. Such terms include the expiration date, any subscription agent, method of exercising subscription rights, payment for shares, delivery of stock certificates for shares purchased, maximum subscription price, possible reduction of subscription price, relationship of subscription price to public offering price, requirement that all unsubscribed shares be sold, and any other material conditions relating to the exercise of subscription rights. Item 6. Information with Respect to Public Offering or Direct Community Offering

Each offering circular shall describe the material terms of the plan or plans of distribution for all unsubscribed shares of capital stock to the extent such description is not already in the proxy statement, including

the following:

(a) If the shares are to be offered through underwriters, the outside front cover page of both offering circulars shall give the information called for by this paragraph. In the case of the offering circular for any public offering, such information shall be given in substantially the tabular form set forth below. In any other case, the information may be given in narrative form. If the information is not known at the time of the subscription offering, so state and estimate.

	Price to public	Underwriting discounts and commissions	Proceeds to applicant
Per share	\$	\$	\$
Total	\$	\$	

(b) An offering circular for a public offering or direct community marketing, where the plan of conversion does not contain the optional provision permitted by § 563b.3(d)(11), may omit the description relating to the exercise of subscription rights

required by Item 5.

(c) If any shares are to be offered through underwriters, the offering circular for the public offering shall state the names of the principal underwriters and the respective amounts underwritten by each. The names of the principal underwriters other than the managing underwriters and the respective amounts to be underwritten may be omitted from the offering circular for the subscription offering, unless the plan of conversion contains the optional provision permitted by § 563b.3(d)(11). Each offering circular shall identify each principal underwriter having a material relationship to the applicant and state the nature of the relationship. Each offering circular shall state briefly the nature of the underwriter's obligation to take the unsubscribed shares.

(d) The offering circular for the public offering shall state briefly the discounts and commissions to be allowed or paid to dealers in connection with the sale of the unsubscribed shares. Such information may be omitted from the offering circular for any subscription offering, unless the plan of conversion contains the optional provision

permitted by § 563b.3(d)(11).
(e) If any shares are to be offered through underwriters, the offering circular for the public offering shall identify any principal underwriter that intends to confirm sales to any accounts over which it exercises discretionary authority and include an estimate of the number of shares so intended to be confirmed. Such information may be omitted from the offering circular for any subscription offering.

Instructions. 1. Commissions include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings made with or for the benefit of any persons in which any underwriter or dealer is interested, in connection with the

sale of the shares.

2. Only commissions paid by the applicant in cash are to be included in the table. Any other consideration to the underwriters shall be set forth following the table with a

reference thereto in the second column of the table. Any finder's fees or similar payments shall be appropriately disclosed.

3. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the shares if any are taken, or whether it is merely an agency or "best efforts" arrangement under which the underwriters are required to take and pay for only such shares as they may sell to the public. Conditions precedent to the underwriters' taking the shares, including customary "market outs," need not be described. If a "best efforts" arrangement is used, describe any standby commitments for shares not sold.

(f) If any shares are to be sold by the converting savings association through a direct community marketing, indicate the timing of the offering, the geographical area where the offering will be made, the method to be employed to market the shares, including the frequency and nature of communications or contracts with potential purchasers, any preferences that will be given any such geographical area or class of potential purchasers, and the limitations on purchases by potential purchasers.

## PART 563c-ACCOUNTING REQUIREMENTS

#### Subpart A-Form and Content of Financial Statements

563c.1 Form and content of financial statements.

563c.2 Definitions.

Qualification of public accountant. Condensed financial information [Parent only].

#### Subpart B-Other Accounting Requirements

563c.10 Use of accrual basis of accounting.

563c.11 [Reserved]

Accounting for net income.
Accounting for investment in 563c.12 563c.13

service corporation.

563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases. and certain securities; matching the amortization of discounts and losses.

#### Subpart C-Financial Statement Presentation

563c.101 Application of this subpart. 563c.102 Financial statement presentation.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 3fb), 12-14, 23, 48 Stat. 882, 892, 894-895, 901, as amended (15 U.S.C. 78c(b), m, n, w).

#### Subpart A-Form and Content of **Financial Statements**

## § 563c.1 Form and content of financial statements.

(a) This subpart A states the requirements as to form and content of financial statements included by a

savings association in the following documents. However, the Office's regulations governing the applicable documents specify the actual financial statements that are to be included in that document.

(1) Any proxy statement or offering circular required to be used in connection with a conversion under part

563b of this subchapter.

(2) Any offering circular or nonpublic offering materials required to be used in connection with an offer or sale of securities under Part 563g of this subchapter.

(3) Any filing under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., made pursuant to the requirements of Part 563d of this subchapter.

(b) Except as otherwise provided by the Office by rule, regulation, or order made specifically applicable to financial statements governed by this section, financial statements shall:

(l) Be prepared and presented in accordance with generally accepted

accounting principles;

(2) Comply with subpart C of this part; (3) Consistent with the provisions of this subpart, comply with Articles 1, 2, 3, 4, 10, and 11 of Regulation S-X adopted by the Securities and Exchange Commission (17 CFR 210.1-210.4, 210.10, and 210.11).

(4) Be audited, when required, by an independent auditor in accordance with the standards imposed by the American Institute of Certified Public Accountants.

(c) The term "financial statements" includes all notes to the statements and related schedules.

#### § 563c.2 Definitions.

(See also 17 CFR 210.1-02.)

(a) Registrant. The term "registrant" means an applicant, a savings association, or any other person required to prepare financial statements in accordance with this subpart.

(b) Significant subsidiary. The term "significant subsidiary" means a subsidiary, including its subsidiaries, which meets any of the following

conditions:

(1) The association's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the association and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for purposes of determining whether financial statements of a business acquired or to be acquired in a business combination accounted for as a pooling of interests are required pursuant to 17 CFR 210.3-05, this condition is also met when the number of common shares

exchanged by the association exceeds 10 percent of its total common shares outstanding at the date the combination

is initiated); or

(2) The association's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the association and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The association's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items, and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the association and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent or its consolidated subsidiaries or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the association and its subsidiaries consolidated for purposes of the computation.

2. If income of the association and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

#### § 563c.3 Qualification of public accountant.

(See also 17 CFR 210.2-01.)

(a) The term "qualified public accountant" means a certified public accountant or licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States who is in good standing as such under the laws of the jurisdiction where the home office of the registrant to be audited is located. Any person or firm who is suspended from practice before the Securities and Exchange Commission or other governmental agency is not a "qualified public accountant" for purposes of this section.

(b) Independence of public accountant. (See § 571.2(c)(3) of this

subchapter.)

## § 563c.4 Condensed financial information [Parent only].

(a) The information prescribed by Schedule III required by section IV of § 563c.102 of this part shall be presented in a note to the financial statements when the restricted net assets [17 CFR 210.4-08(e)(3)) of consolidated

subsidiaries exceed 25 percent of consolidated net assets as of the end of the most recently completed fiscal year. The investment in and indebtedness of and to association subsidiaries shall be stated separately in the condensed balance sheet from amounts for other subsidiaries; and the amount of cash dividends paid to the parent association for each of the last three years by association subsidiaries shall be stated separately in the condensed income statement from amounts for other subsidiaries.

(b) For purposes of the above test, restricted net assets of consolidated subsidiaries shall mean that amount of the association's proportionate share of net assets of consolidated subsidiaries (after intercompany eliminations) which as of the end of the most recent year may not be transferred to the parent company by subsidiaries in the form of loans, advances, or cash dividends without the consent of a third party (i.e., lender, regulatory agency, foreign

government, etc.).
(c) Where restrictions on the amount of funds which may be loaned or advanced differ from the amount restricted as to transfer in the form of cash dividends, the amount least restrictive to the subsidiary shall be used. Redeemable preferred stocks (See Item I (22) in § 563c.102) and minority interest (See Item I (21) in § 563c.102) shall be deducted in computing net assets for purposes of this test.

### Subpart B-Other Accounting Requirements

### § 563c.10 Use of accrual basis of accounting.

(a) Definition. As used herein, the term "accrual basis of accounting" refers to that accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is recorded when earned, whether or not received.

(b) General rule. Savings associations shall use the accrual basis of accounting to prepare and maintain their accounting records and/or to prepare their financial statements and reports to the Office, except that this requirement shall not apply to savings associations whose total assets do not exceed \$10,000,000.

(c) Preparation and maintenance of books and records. For the purpose of examinations by the Office, savings associations which elect or are required to use the accrual basis of accounting for the preparation of financial statements and reports to the Office and which prepare and maintain books and records on a basis other than the accrual basis of accounting shall also prepare and maintain such records and reconciliations as will properly support such statements and reports.

(d) Initial accrual basis adjustments. (1) A savings association which elects or is required to use the accrual basis of accounting shall make initial adjustment to convert to such basis of accounting as of the beginning of the annual accounting period to which such election or requirement is applicable, and such initial adjustments shall be recorded no later than the close of business of the sixth month of such annual accounting period.

(2) The net amount of the initial adjustments may be recorded as a nonoperating income or expense item, as the case may be, or may be recorded as a direct charge or credit to appropriate regulatory capital accounts.

#### § 563c.11 [Reserved]

## § 563c.12 Accounting for net income.

(a) Definition of net income. The term 'net income" means gross income of all kinds from all sources less all expenses, including interest on Federal Home Loan Bank advances and borrowed money, interest or dividends on withdrawable or nonwithdrawable accounts (except capital stock), Federal, state or local income taxes, if any, and losses of every kind and nature.

(b) Reporting of net income. All reports submitted to the Office by or for a savings association (including reports of audit) which include therein data relating to net income for any quarterly period ending on or after October 31, 1971, shall report net income in accordance with the definition contained in paragraph (a) of this section.

## § 563c.13 Accounting for investment in service corporation.

(a) For purposes of examination by and reports to the Office and of compliance with this subchapter, each service corporation shall be prepared to show its earnings under the provisions of §§ 563.231 and 563.173 of this chapter, and each savings association shall calculate and report the outstanding book value of its investment in any service corporation as though such service corporation applied the provisions of §§ 563.231 and 563.173 of this chapter to the calculation of its earnings.

(b) For purposes of this section, when applying the provisions of § 563.231 of this chapter, any loans made or committed to be made to the purchaser of the real estate, or any such loan acquired or committed to be acquired by the savings association or any affiliate, as defined in § 561.4, shall be considered as if they were made directly by the service corporation: Provided, That this paragraph (b) shall not apply if not more than ten percent of the stock of the service corporation is owned by the savings association that is providing the financing or that has subsequently acquired the mortgage or security property.

- § 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.
- (a) General. A savings association, by resolution of its board of directors, may elect to defer and amortize all gains and losses net of related income taxes computed in accordance with generally accepted accounting principles, on any sale or other disposition, occurring in the fiscal year that the action to defer and amortize is taken, of mortgage loans, redeemable ground-rent leases, mortgage-related securities (as defined in § 563.174(a)(4) of this subchapter), preferred stock that at the time of issuance provides for redemption on a fixed date in a fixed dollar amount or for redemption pursuant to a fixed schedule of periodic payments and has a remaining term to maturity of at least five years, and debt securities that do not qualify as liquid assets under § 566.1(g) (except those qualifying under § 566.1(g)(11)) of this chapter because of their maturities or that have remaining terms to maturity of at least five years. Using the same procedure, an association may revoke any prior election(s) to amortize gains and losses on the disposition of such assets. The election to defer gains and losses is restricted to the disposition of assets acquired, purchased, originated or committed to be acquired, purchased or originated prior to October 28, 1984. Participation certificates and similar securities obtained in exchange for assets acquired, purchased or committed to be acquired or purchased prior to October 28, 1984, qualify for treatment under this section.
- (b) Amortization. An association making this election shall:
- Demonstrate an intent to use the sale proceeds so as to improve the association's future profitability and/or reduce interest-rate risk;
- (2) If it is a state-chartered association, exercise this election only if its state supervisory authority has provided the Office with either specific or blanket concurrence for state law purposes in the use of this accounting

treatment by sending the concurrence to the Office's District Director.

- (3) Account for such gains and losses as follows:
- (i) Such gains and losses (net of related income taxes computed in accordance with generally accepted accounting principles) shall be carried in a separate account and shall be readily identifiable in the association's statement of condition;
- (ii) Such gains or losses shall be amortized by the straight-line or level-yield methods over a period not to exceed the average of the remaining terms to maturity of the disposed mortgage loans or qualifying securities, or, in the case of redeemable ground-rent leases, a period not to exceed 40 years, with the yield calculated to reflect the length of the amortization period. Amortization periods for gains shall be established in the same manner as are amortization periods for losses deferred in the same fiscal year.
- (c) Matching the amortization of discounts and losses.
- (1) For purposes of paragraph (c) of this section only:
- (i) The term "long-term, deep-discount security" means any loan, lease or security identified in paragraph (a) of this section that has a remaining term to maturity, at the time of purchase, of ten years or more, and is purchased at a price of less than 90% of its stated (par) value or principal balance.
- (2) When long-term, deep-discount securities are purchased or otherwise acquired within six months preceding or subsequent to the disposition of a mortgage loan, mortgage-related security or debt security with respect to which an election to defer and amortize any loss or gain has been made pursuant to paragraph (a) of this section, the resulting discount shall be amortized over the same period and by the same method used to amortize any matching loss: Provided, That: (i) The method used for the loss is also an appropriate method by which to amortize a discount, and (ii) if the average of the remaining terms to maturity of the securities purchased is shorter than the period used to amortize the matching loss, then the average of the remaining terms to maturity of the securities purchased may be used as the amortization period for the discount.
- (3) If necessary to meet the requirements of paragraph (c)(2) of this section, an association may change the method and period by which the matching loss is being amortized. When making such a change, the amount of the matching loss shall be that portion of the

loss that remains to be amortized as of the date of the change.

- (d) For purposes of this section, "disposition" includes, but is not limited to:
- (1) Prepayment at a discount of an association's mortgage loans by existing borrowers,
- (2) Sales of loans (including participation interests therein), leases and securities identified in paragraph (a) of this section, and
- (3) Exchanges of assets eligible for disposition under this section.
- (e) The accounting treatment authorized by this section may be used only for mortgages and qualifying securities sold or otherwise disposed of during fiscal years ending on or after September 30, 1981. The board of directors of any association that has a fiscal year ending prior to December 31, 1982, must make the election authorized by paragraph (a) of this section prior to January 1, 1982.
- (f) "Sunset" and "Grandfather" Provisions. Authority to exclude the unamortized amount of gain deferrals and to include the unamortized amount of loss deferrals in computing an association's regulatory capital will cease as of January 1, 1988. Any savings association that has excluded gain deferrals and included loss deferrals in computing its regulatory capital as of January 1, 1988, may continue to exclude the unamortized amount of such gain deferrals and include the unamortized amount of such loss deferrals in computing its regulatory capital after January 1, 1988.

#### Subpart C—Financial Statement Presentation

## § 563c.101 Application of this subpart.

This subpart contains rules pertaining to the form and content of financial statements included as part of:

- (a) A conversion application under part 563b, including financial statements in proxy statements and offering circulars,
- (b) A filing under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., and
- (c) Any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.74, debt securities under § 563.80 and § 563.81, and retail repurchase agreements under § 563.84 of this subchapter.

# § 563c.102 Financial statement presentation.

This section specifies the various line items which should appear on the face of the financial statements governed by this Subpart C and additional disclosures which should be included with the financial statements in related notes.

#### I. Balance Sheet

Balance sheets shall comply with the following provisions:

#### Assets

1. Cash and amounts due from depository institutions. (a) The amounts in this caption should include noninterest-bearing deposits

with depository institutions.

- (b) State in a note the amount and terms of any deposits in depository institutions held as compensating balances against long- or short-term borrowing arrangements. This disclosure should include the provisions of any restrictions as to withdrawal or usage. Restrictions may include legally restricted deposits held as compensating balances against short-term borrowing arrangements, contracts entered into with others, or company statements of intention with regard to particular deposits; however, time deposits and short-term certificates of deposits are not generally included in legally restricted deposits. In cases where compensating balance arrangements exist but are not agreements which legally restrict the use of cash amounts shown on the balance sheet, describe in the notes to the financial statements these arrangements and the amount involved, if determinable, for the most recent audited balance sheet required and for any subsequent unaudited balance sheet required. Compensating balances that are maintained under an agreement to ensure future credit availability shall be disclosed in the notes to the financial statements along with the amount and terms of the agreement.
- (c) Checks outstanding in excess of an applicant's book balance in a demand deposit account shall be shown as a liability.

Interest-bearing deposits in other banks.
 Federal funds sold and securities

purchased under resale agreements or similar arrangements. These amounts should be presented, i.e., gross and not netted against Federal funds purchased and securities sold under agreement to repurchase, as reported in Caption 15.

4. Trading-account assets. Include securities considered to be held for trading purposes in accordance with the Statement of

Policy at § 571.19.

5. Other short-term investments.

6. Investment securities. (a) Include securities considered to be held for investment purposes in accordance with the Statement of Policy at § 571.19. Disclose the aggregate book value of investment securities as the line item on the balance sheet; and also show on the face of the balance sheet the aggregate market value at the balance sheet date. The aggregate amounts should include securities pledged, loaned, or sold under repurchase agreements and similar arrangements. Borrowed securities and securities purchased under resale agreements or similar arrangements should be excluded.

(b) Disclose in a note the carrying value and market value of securities of (i) the U.S. Treasury and other U.S. Government

agencies and corporations; (ii) states of the U.S. and political subdivisions thereof; and (iii) other securities.

7. Assets held for sale. Investments in assets considered to be held for sale in accordance with the Statement of Policy at § 571.19 should be reported separately in the statement of financial condition.

8. Loans. (a) Disclose separately: (i) Total loans (including financing type leases), (ii) allowance for loan losses, (iii) unearned income on installment loans, (iv) discount on loans purchased, and (v) loans in process.

(b) State on the balance sheet or in a note the amount of loans in each of the following categories: (i) Real estate mortgage; (ii) real estate construction; (iii) installment; and (iv) commercial, financial, and agricultural.

(c)(i) Include under the real estate mortgage category loans payable in monthly, quarterly, or other periodic installments and secured by developed income property and/or personal

(ii) Include under the real estate construction category loans secured by real estate which are made for the purpose of financing construction of real estate and land

development projects.

(iii) Include under the installment category loans to individuals generally repayable in monthly installments. This category shall include, but not be limited to, credit card and related activities, individual automobile loans, other installment loans, mobile home loans, and residential repair and modernization loans.

(iv) Include under the commercial, financial, and agricultural category all loans not included in another category. This category shall include, but not be limited to, loans to real estate investment trusts, mortgage companies, banks, and other financial institutions; loans for carrying securities; and loans for agricultural purposes. Do not include loans secured primarily by developed real estate.

(d) State separately any other loan category regardless of relative size if necessary to reflect any unusual risk

concentration.

(e) Unearned income on installment loans shall be shown and deducted separately from total loans.

(f) Unamortized discounts on purchased loans shall be deducted separately from total

(g) Loans in process shall be deducted separately from total loans.

(h) A series of categories other than those specified in (b) above may be used to present details of loans if considered a more appropriate presentation. The categories specified in (b) above should be considered the minimum categories that may be presented.

(i) For each period for which an income statement is presented, disclose in a note the total dollar amount of loans being serviced by the association for the benefit of others.

(j)(i)(A) As of each balance sheet date. disclose in a note the aggregate dollar amount of loans (exclusive of loans to any such persons which in the aggregate do not exceed \$60,000 during the last year) made by the association or any of its subsidiaries to directors, executive officers, or principal

holders of equity securities (17 CFR 210.1-02) of the association or any of its significant subsidiaries (17 CFR 210.1-02) or to any associate of such persons. For the latest fiscal year, an analysis of activity with respect to such aggregate loans to related parties should be provided. The analysis should include at the beginning of the period new loans, repayments, and other changes. [Other changes, if significant, should be explained.)

(B) This disclosure need not be furnished when the aggregate amount of such loans at the balance sheet date (or with respect to the latest fiscal year, the maximum amount outstanding during the period) does not exceed 5 percent of stockholders' equity at

the balance sheet date.

(ii) If a significant portion of the aggregate amount of loans outstanding at the end of the fiscal year disclosed pursuant to subparagraph (i)(A) of this paragraph (j) above relates to nonaccrual, past due, restructured, and potential problem loans (see Securities and Exchange Commission's Securities Act Industry Guide 3, Section III.C.), so state and disclose the aggregate amount of such loans along with such other information necessary to an understanding of the effects of the transactions on the financial statements.

(iii) Notwithstanding the aggregate disclosure called for by paragraph (j)(i) of this balance sheet caption 8, if any loans were not made in the ordinary course of business during any period for which an income statement is required to be filed, provide an appropriate description of each such loan (see 17 CFR 210.9-03.7(e)(3)).

(iv) For purposes only of Balance Sheet Item 8(j), the following definitions shall

(A) "Associate" used to indicate a relationship with any person means (1) any corporation, venture, or organization of which such person is a general partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities; (2) any trust or other estate in which such person has a substantial beneficial interest or for which such person serves as trustee or in a similar capacity; and (3) any member of the immediate family of any of the foregoing persons.

(B) "Executive officer" means the president, any vice president in charge of a principal business unit, division, or function (such as loans, investments, operations, administration, or finance), and any other officer or person who performs similar policy-

making functions.

(C) "Immediate family" with regard to a person means such person's spouse, parents, children, siblings, mother- and father-in-law. sons- and daughters-in-law, and brothersand sisters-in-law.

(D) "Ordinary course of business" with regard to loans means those loans which were made on substantially the same terms, including interest rate and collateral, as those prevailing at the same time for comparable transactions with unrelated persons and did not involve more than the normal risk of collectibility or present other unfavorable

(k) For each period for which an income statement is presented, furnish in a note a statement of changes in the allowance for loan losses, showing balances at beginning and end of the period, provision charged to income, recoveries of amounts previously charged off, and losses charged to the allowance.

9. Premises and equipment. 10. Real estate owned. State, parenthetically or otherwise:

(a) The amount of real estate owned by class as described in paragraph (b) below and the basis for determining that amount;

- (b) A description of each class of real estate owned (i) acquired by foreclosure or by deed in lieu of foreclosure, (ii) in judgment and subject to redemption, or (iii) acquired for development or resale. Show separately any accumulated depreciation or valuation allowances. Disclose the policies regarding, and amounts of, capitalized costs, including interest.
- 11. Investment in joint ventures. In a note, present summarized aggregate financial statements for investments in real estate or other joint ventures which individually (a) are 20 percent or more owned by the association or any of its subsidiaries, or (b) have liabilities (including contingent liabilities) to the parent exceeding 10 percent of the parent's regulatory capital. If an allowance for real estate losses subsequent to acquisition is maintained, the amount shall be disclosed, deducted from the other real estate owned, and a statement of changes in the allowance showing balances at beginning and end of period should be included. Provision charged to income and losses charged to the allowance account shall be furnished for each period for which an income statement is filed.

12. Other assets. (a) Disclose separately on the balance sheet or in a note thereto any of the following assets or any other asset the amount of which exceeds 30 percent of stockholders' equity. The remaining assets may be shown as one amount.

(i) Accrued interest receivable. State separately those amounts relating to loans and those amounts relating to investments.

(ii) Excess of cost over assets acquired (net of amortization).

(b) State in a note (i) amounts representing investments in affiliates and investments in other persons which are accounted for by the equity method, and (ii) indebtedness of affiliates and other persons, the investments in which are accounted for by the equity method. State the basis of determining the amounts reported under paragraph (b)(i).

13. Total assets.

# Liabilities, and Stockholders' Equity

14. Deposits. (a) Disclose separately on the balance sheet or in a note the amounts in the following categories of interest-bearing and noninterest-bearing deposits: (i) NOW account and MMDA deposits, (ii) savings deposits, and (iii) time deposits.

(b) Include under the savings-deposits category interest-bearing deposits without specified maturity or contractual provisions requiring advance notice of intention to withdraw funds. Include deposits for which

an association may require at its option written notice of intended withdrawal not less than 14 days in advance.

(c) Include under the time-deposits category deposits subject to provisions specifying maturity or other withdrawal conditions such as time certificates of deposits, open account time deposits, and deposits accumulated for the payment of personal loans.

(d) Include accrued interest or dividends, if

appropriate.

15. Short-term borrowings. (a) State separately, here or in a note, the amounts payable for (i) Federal funds purchased and securities sold under agreements to repurchase, (ii) commercial paper, and (iii) other short-term borrowings.

(b) Federal funds purchased and sales of securities under repurchase agreements shall be reported gross and not netted against sales of Federal funds and purchase of securities under resale agreements.

(c) Include as securities sold under agreements to repurchase all transactions of this type regardless of (i) whether they are called simultaneous purchases and sales, buy-backs, turnarounds, overnight transactions, delayed deliveries, or other terms signifying the same substantive transaction, and (ii) whether the transactions are with the same or different institutions, if the purpose of the transactions is to repurchase identical or similar securities.

(d) The amount and terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing shall be disclosed, if significant, in the notes to the financial statements. The amount of these lines of credit which support a commercial paper borrowing arrangement or similar arrangements shall be separately identified.

16. Advance payments by borrowers for

taxes and insurance.

17. Other liabilities. Disclose separately on the balance sheet or in a note any of the following liabilities or any other items which are individually in excess of 30 percent of stockholders' equity (except that amounts in excess of 5 percent of stockholders' equity should be disclosed with respect to Item (d)). The remaining items may be shown as one amount.

(a) Income taxes payable.

(b) Deferred income taxes.

(c) Indebtedness to affiliate and other persons the investment in which is accounted

for by the equity method.

(d) Indebtedness to directors, executive officers, and principal holders of equity securities of the registrant or any of its significant subsidiaries. (The guidance in balance sheet caption "8(j)" shall be used to identify related parties for purposes of this disclosure.)

18. Bonds, mortgages, and similar debt. (a) Include bonds, Federal Home Loan Bank advances, capital notes, debentures. mortgages, and similar debt.

(b) For each issue or type of obligation state in a note:

(i) The general character of each type of debt, including: (A) The rate of interest, (B) the date of maturity, or, if maturing serially, a brief indication of the serial maturities, such

as "maturing serially from 1980 to 1990," (C) if the payment of principal or interest is contingent, an appropriate indication of such contingency, (D) a brief indication of priority, and (E) if convertible, the basis. For amounts owed to related parties see 17 CFR 210.4-08(k)

(ii) The amount and terms (including commitment fees and the conditions under which commitments may be withdrawn) of unused commitments for long-term financing arrangements that, if used, would be disclosed under this caption shall be disclosed in the notes to the financial

statements, if significant.

(c) State in the notes with appropriate explanations (i) the title and amount of each issue of debt of a subsidiary included in (a) above which has not been assumed or guaranteed by the association, and (ii) any liens on premises of a subsidiary or its consolidated subsidiaries which have not been assumed by the subsidiary or its consolidated subsidiaries.

19. Deferred credits. State separately those items which exceed 30 percent of

stockholders' equity.

20. Commitments and contingent liabilities. Total commitments to fund loans should be disclosed. The dollar amounts and terms of other than floating market-rate commitments should also be disclosed.

21. Minority interest in consolidated subsidiaries.

22. Preferred stock subject to mandatory redemption requirements or the redemption of which is outside the control of the issuer. (a) Include under this caption amounts applicable to any class of stock which has any of the following characteristics: (i) it is redeemable at a fixed or determinable price on a fixed or determinable date or dates, whether by operation of a sinking fund or otherwise; (ii) it is redeemable at the option of the holder; or (iii) it has conditions for redemption which are not solely within the control of the issuer, such as stock which must be redeemed out of future earnings. Amounts attributable to preferred stock which is not redeemable or is redeemable solely at the option of the issuer shall be included under caption 23 unless it meets one or more of the above criteria.

(b) State on the face of the balance sheet the title, carrying amount, and redemption amount of each issue. (If there is more than one issue, these amounts may be aggregated on the face of the balance sheet and details concerning each issue may be presented in the note required by paragraph (c) below.) Show also the dollar amount of any shares subscribed for but unissued, and show the deduction of subscriptions receivable therefrom. If the carrying value is different from the redemption amount, describe the accounting treatment for such difference in the note required by paragraph (c) below. Also state in this note or on the face of the balance sheet, for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. (See 17 CFR 210.4-07.)

(c) State in a separate note captioned "Redeemable Preferred Stock" (i) a general description of each issue, including its

redemption features (e.g., sinking fund, at option of holders, out of future earnings) and the rights, if any, of holders in the event of default, including the effect, if any, on junior securities in the event a required dividend, sinking fund, or other redemption payment(s) is not made, (ii) the combined aggregate amount of redemption requirements for all issues each year for the five years following the date of the latest balance sheet, and (iii) the changes in each issue for each period for which an income statement is required to be presented. (See also 17 CFR 210.4-08(d).)

(d) Securities reported under this caption are not to be included under a general heading "stockholders' equity" or combined in a total with items described in captions 23,

24 or 25, which follow.

23. Preferred stock which is not redeemable or is redeemed solely at the option of the issuer. State on the face of the balance sheet, or, if more than one issue is outstanding, state in a note, the title of each issue and the dollar amount thereof. Show also the dollar amount of any shares subscribed for but unissued, and show the deduction of subscriptions receivable. State on the face of the balance sheet or in a note. for each issue, the number of shares authorized and the number of shares issued or outstanding, as appropriate. (See 17 CFR 210.4-07.) Show in a note or separate statement the changes in each class of preferred shares reported under this caption for each period for which an income statement is required to be presented. (See

also 17 CFR 210.4-08(d).)

24. Common stock. For each class of common shares state, on the face of the balance sheet, the number of shares issued or outstanding, as appropriate (see 17 CFR 210.4-07), and the dollar amount thereof. If convertible, this fact should be indicated on the face of the balance sheet. For each class of common stock state, on the face of the balance sheet or in a note, the title of the issue, the number of shares authorized, and, if convertible, the basis for conversion (see also 17 CFR 210.4-08(d).) Show also the dollar amount of any common stock subscribed for but unissued, and show the deduction of subscriptions receivable. Show in a note or statement the changes in each class of common stock for each period for which an income statement is required to be presented.

25. Other stockholders' equity. (a) Separate captions shall be shown on the face of the balance sheet for (i) additional paid-in capital, (ii) other additional capital, and (iii) retained earnings, both (A) restricted and (B) unrestricted. (See 17 CFR 210.4-08(e).) Additional paid-in capital and other additional capital may be combined with the stock caption to which it applies, if appropriate. State whether or not the association is in compliance with the Federal regulatory capital requirements (and state requirements where applicable). Also include the dollar amount of those regulatory capital requirements and the amount by which the association exceeds or fails to meet those requirements.

(b) For a period of at least 10 years subsequent to the effective date of a quasireorganization, any description of retained earnings shall indicate the point in time from which the new retained earnings dates, and for a period of at least three years shall indicate, on the face of the balance sheet, the total amount of the deficit eliminated.

(c) Changes in stockholders' equity shall be disclosed in accordance with the requirements of 17 CFR 210.3-04.

26. Total liabilities and stockholders' equity.

#### II. Income Statement

Income statements shall comply with the

following provisions:

1. Interest and fees on loans. (a) Include interest, service charges, and fees which are related to or are an adjustment of the loan interest yield.

(b) Current amortization of premiums on mortgages or other loans shall be deducted from interest on loans, and current accretion of discount on such items shall be added to interest on loans.

(c) Discounts and other deferred amounts which are related to or are an adjustment of the loan interest yield shall be amortized into income using the interest (level yield) method.

2. Interest and dividends on investment securities. Include accretion of discount on securities and deduct amortization of premiums on securities.

3. Trading account interest. Include interest from securities carried in a dealer trading account or accounts that are held principally for resale to customers.

4. Other interest income. Include interest on short-term investments (Federal funds sold and securities purchased under agreements to resell) and interest on bank

5. Total interest income.

6. Interest on deposits. Include interest on all deposits. On the income statement or in a note, state separately, in the same categories as those specified for deposits at balance sheet caption 14(a), the interest on those deposits. Early withdrawal penalties should be netted against interest on deposits and, if material, disclosed on the income statement.

7. Interest on short-term borrowings Include interest on borrowed funds, including Federal funds purchased, securities sold under agreements to repurchase, commercial paper, and other short-term borrowings.

8. Interest on long-term borrowings. Include interest on bonds, capital notes, debentures, mortgages on association premises, capitalized leases, and similar

9. Total interest expense.

10. Net interest income.

11. Provision for loan losses.

12. Net interest income after provision for loan losses.

13. Other income. Disclose separately any of the following amounts, or any other item of other income, which exceeds 1 percent of the aggregate of total interest income and other income. The remaining amount may be shown as one amount, except for investment securities gains or losses which shall be shown separately regardless of size.

(a) Commissions and fees from fiduciary

(b) Fees for other services to customers.

(c) Commissions, fees, and markups on securities underwriting and other securities

(d) Profit or loss on transactions in investment securities.

(e) Equity in earnings of unconsolidated subsidiaries and 50-percent- or less-owned

(f) Gains or losses on disposition of investments in securities of subsidiaries and 50-percent- or less-owned persons.

(g) Profit or loss from real estate

operations. (h) Other fees related to loan originations or commitments not included in income

statement caption 1. The remaining other income may be shown in one amount.

(i) Investment securities gains or losses. The method followed in determining the cost of investments sold (e.g., "average cost,"
"first-in, first-out," or "identified certificate") and related income taxes shall be disclosed.

14. Other expenses. Disclose separately any of the following amounts, or any other item of other expense, which exceeds 1 percent of the aggregate of total interest income and other income. The remaining amounts may be shown as one amount.

(a) Salaries and employee benefits. (b) Net occupancy expense of premises.

(c) Net cost of operations of other real estate (including provisions for real estate losses, rental income, and gains and losses on sales of real estate).

(d) Minority interest in income of consolidated subsidiaries.

(e) Goodwill amortization. 15. Other income and expenses. State separately material events or transactions that are unusual in nature or occur infrequently, but not both, and therefore do not meet both criteria for classification as an extraordinary item. Examples of items which would be reported separately are gain or loss from the sale of premises and equipment, provision for loss on real estate owned, or

provision for gain or loss on the sale of loans. 16. Income or losses before income tax

17. Income tax expense. The information required by 17 CFR 210.4-08(h) should be disclosed.

18. Income or loss before extraordinary items effects of changes in accounting

19. Extraordinary items, less applicable

20. Cumulative effects of changes in accounting principles.

21. Net income or loss.

22. Earnings-per-share data.

23. Conversion footnote. If the association is an applicant for conversion from a mutual to a stock association or has converted within the last three years, describe in a note the general terms of the conversion and restrictions on the operations of the association imposed by the conversion. Also, state the amount of net proceeds received from the conversion and costs associated with the conversion.

24. Mergers and acquisitions. For the period in which a business combination occurs and is accounted for by the purchase method of accounting, in addition to those disclosures required by Accounting Principles Board Opinion No. 16, the association shall make those disclosures as noted below for all combinations involving significant acquisitions. (A significant acquisition is defined for this purpose to be one in which the assets of the acquired association, or group of associations, exceed 10 percent of the assets of the consolidated association at the end of the most recent period being reported upon.)

(a) Amounts and descriptions of discounts and premiums related to recording the aggregate interest-bearing assets and liabilities at their fair market value. The disclosure should also include the methods of amortization or accretion and the estimated

remaining lives.

(b) The net effect on net income before taxes of the amortization and accretion of discounts, premiums, and intangible assets related to the purchase accounting transaction(s). For subsequent periods, the association shall disclose the remaining total

unamortized or unaccreted amounts of discounts, premiums, and intangible assets as of the date of the most recent balance sheet presented. In addition, the association shall disclose the net effect on net income before taxes of the amortization and accretion of discounts, premiums, and intangible assets related to prior business combinations accounted for by the purchase method of accounting. Such disclosures need not be made if the total amounts of discounts, premiums, or intangible assets do not exceed 30 percent of stockholders' equity as of the date of the most recent balance sheet presented.

### III. Statement of Cash Flows

The amounts shown in this statement should be those items which materially enhance the reader's understanding of the association's business. For example, gains from sales of loans should be segregated from sales of mortgage-backed securities and other securities, if material, proceeds from principal repayments and maturities from

loans and mortgage-backed securities should be segregated from proceeds from sales of loans and mortgage-backed securities, purchases of loans, mortgage-backed securities and other securities should be segregated, if material. Additional guidance may be found in the FASB's Statement of Financial Accounting Standards No. 95 Statement of Cash Flows.

#### IV. Schedules Required to be Filed

The following schedules, which should be examined by an independent accountant, shall be filed unless the required information is not applicable or is presented in the related financial statements;

(1) Schedule I-Indebtedness of and to related parties-Not Current. For each period for which an income statement is required, the following schedule should be filed in support of the amounts required to be reported by balance sheet Items 8(j) and 17(c) unless such aggregate amount does not exceed 5 percent of stockholders' equity at either the beginning or the end of the period:

### INDEBTEDNESS OF AND TO RELATED PARTIES-NOT CURRENT

Indebtedness of—				
Name of person <sup>1</sup>	Balance at beginning	Additions <sup>2</sup>	Deductions <sup>3</sup>	Balance at end
A	В	С	D	E

### INDEBTEDNESS OF AND TO RELATED PARTIES-NOT CURRENT

Indebtedness to—			Delegan at and		
Name of person <sup>1</sup>	Balance at beginning	Additions <sup>2</sup>	Deductions <sup>a</sup>	Balance at end	
A	F	G	н	t .	

1 The persons named shall be grouped as in the related schedule required for investments in related parties. The information called for shall be shown separately for any persons trained shall be grouped as if the related schedule.

\*For each person named in column A, explain in a note the nature and purpose of any increase during the period that is in excess of 10 percent of the related belance at either the beginning or end of the period.

\*If deduction was other than a receipt or disbursement of cash, explain.

(2) Schedule II—Guarantees of securities of other issuers. The following schedule should be filed as of the date of the most recently audited balance sheet with respect to any guarantees of securities of other issuers by the person for which the statements are being filed:

# GUARANTEES OF SECURITIES OF OTHER ISSUERS 1

Col. A. Name of issuer of securities guaranteed by person for which statement is filed	Col. B. Title of issue of each class of securities guaran- teed	Col. C. Total amount guaranteed and outstanding <sup>3</sup>	Col. D. Amount owned by person or persons for which statement is filed

# GUARANTEES OF SECURITIES OF OTHER ISSUERS 1

Indicate in a note to the most recent schedule being tiled for a particular person or group any significant changes since the date of the related balance sheet, if this schedule is filed in support of balance sheet. If this schedule is lined in support of consolidated or combined statements, there shall be set forth guarantees by any person included in the consolidation or combination, except that such guarantees of securities which are included in the consolidated or combined balance sheet need not be

\* Indicate any amounts included in column C which are included also in column D or E.

\* There need be made only a brief statement of the nature of the guarantee, such as "Guarantee of principal and interest," or "Guarantee of dividends." If the guarantee is of interest or dividends, state the annual aggregate amount of interest or dividends so guaranteed.

\* Only a brief statement as to any such dividends.

<sup>4</sup> Only a brief statement as to any such defaults need be made.

(3) Schedule III-Condensed financial information. The following schedule shall be filed as of the dates and for the periods specified in the schedule.

Condensed Financial Information [Parent only]

[Association may determine disclosure based on information provided in footnotes

(a) Provide condensed financial information as to financial position, changes in financial position, and results of operations of the association as of the same dates and for the same periods for which audited consolidated financial statements are required. The financial information required need not be presented in greater detail than is required for condensed statement by 17

CFR 210.10-01(a) (2), (3), (4). Detailed footnote disclosure which would normally be included with complete financial statements may be omitted with the exception of disclosure regarding material contingencies, long-term obligations, and guarantees Description of significant provisions of the association's long-term obligations, mandatory dividend, or redemption requirements of redeemable stocks, and guarantees of the association shall be provided along with a 5-year schedule of maturities of debt. If the material contingencies, long-term obligations, redeemable stock requirements, and guarantees of the association have been separately disclosed in the consolidated statements, they need not be repeated in this schedule.

(b) Disclose separately the amount of cash dividends paid to the association for each of the last three fiscal years by consolidated subsidiaries, unconsolidated subsidiaries, and 50-percent- or less-owned persons accounted for by the equity method, respectively.

## PART 563d-SECURITIES OF SAVINGS **ASSOCIATIONS**

#### Subpart A-Regulations

563d.1 Requirements under certain sections of the Securities Exchange Act of 1934. 563d.2 Mailing requirements for securities filings.

563d.3b-6 Liability for certain statements by savings associations.

563d.200-30 Delegation of authority to Chief Counsel.

563d.210 Form and content of financial statements.

#### Subpart B-Interpretations

563d.801 Application of this subpart. 583d.802 Description of business

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 3(b), 12-14, 23, 48 Stat. 882, 892, 894-895, 901, as amended (15 U.S.C. 78c(b), 78 l, m, n, w. 78d-1).

# Subpart A-Regulations

#### § 563d.1 Requirements under certain sections of the Securities Exchange Act of 1934.

In respect to any securities issued by savings associations, the powers, functions, and duties vested in the Securities and Exchange Commission (the "Commission") to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934 (the "Act") are vested in the Office. The rules, regulations and forms prescribed by the Commission pursuant to those sections or applicable in connection with obligations imposed by those sections. shall apply to securities issued by savings associations, except as

otherwise provided in this part. The term "Commission" as used in those rules and regulations shall with respect to securities issued by savings associations be deemed to refer to the Office unless the context otherwise requires. All filings with respect to securities issued by savings associations required by those rules and regulations to be made with the Commission shall be made with the Office by submitting such filings to the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, except as noted in § 563d.2 of this part. Except to the extent specifically provided, no filing fees specified by the Commission's rules shall be paid to the Office.

#### § 563d.2 Mailing requirements for securities filings.

Those savings associations required to file reports with the Corporate and Securities Division, as set forth in § 563d.1 of this part, shall file one of the required number of copies with the District Director or his or her designee. In the case of preliminary versions of any filing, and in the case of Forms 3 and 4, however, all copies shall be sent to the Corporate and Securities Division, as set forth in § 563d.1 of this part. The originally-signed copy and all remaining copies of each filing shall be sent to the Corporate and Securities Division, at the address noted in § 563d.1 of this part. Additionally, copies to the District Director shall be mailed on the same day as the original and remaining copies are forwarded to the Corporate and Securities Division.

#### § 563d.3b-6 Liability for certain statements by savings associations.

This section replaces adherence to 17 CFR 240.3b-6 and applies as follows:

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This section applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a proxy statement or offering circular filed with the Office under part 563b of this subchapter; in a registration statement filed with the Office under the Act on Form 10 (17 CFR 249.210); in part I of a quarterly report filed with the Office on Form 10-Q (17 CFR 241.308a);

in an annual report to shareholders meeting the requirements of § 563d.1 of this part, particularly 17 CFR 240.14a-3 (b) and (c) or 17 CFR 240.14c-3 (a) and (b) under the Act; in a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available; or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document or annual report made publicly available within a reasonable time after the making of such forward-looking statement: Provided,

(i) At the time such statements are made or reaffirmed, either:

(A) The issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Act and has complied with the requirements of 17 CFR 240.13a-1 or 240.15d-1 thereunder, if applicable, to file its most recent annual report on Form 10-K; or

(B) If the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Act, the statements are made either in a registration statement filed under the Securities Act of 1933 or pursuant to section 12 (b) or (g) of the Act, or in a proxy statement or offering circular filed with the Office under part 563b of this subchapter if such statements are reaffirmed in a registration statement under the Act on Form 10, filed with the Office within 180 days of the savings association's conversion, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940;

(2) Information (i) relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S-K (17 CFR 229.303). management's discussion and analysis of financial condition and results of operations, or Item 302 of Fegulation S-K (17 CFR 229.302), supplementary financial information, and [ii] disclosed in a document filed with the Office or in an annual report to shareholders meeting the requirements of 17 CFR 240.14a-3 (b) and (c) or 17 CFR 240.14c-3 (a) and (b) under the Act: Provided, That such information included in a proxy statement or offering circular filed pursuant to part 563b of this subchapter shall be reaffirmed in a registration statement under the Act on Form 10 filed with the Office within 180 days of the association's conversion.

(c) For purposes of this section, the term "forward-looking statement" shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure, or other financial items;

(2) A statement of management's plans and objectives for future

operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations pursuant to Item 303 of Regulation S-K; or

(4) A statement of the assumptions underlying or relating to any of the statements described in paragraph (c)(1), (c)(2), or (c)(3) of this section.

(d) For purposes of this section, the term "fraudulent statement" shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Act of 1933 or the rules or regulations promulgated thereunder.

# § 563d.200-30 Delegation of authority to Chief Counsel.

The Chief Counsel and such person or persons as he or she may designate from time to time shall have delegated authority under the Act to perform the

following actions:

(a) To determine to be effective applications for registration of securities on a national securities exchange prior to 30 days after receipt of a certification pursuant to section 12(d) of the Act, 15 U.S.C. 78/(d);

(b) To accelerate, at the request of the issuer, the effective date of registration statements filed pursuant to section

12(g) of the Act, 15 U.S.C. 78/(g);
(c) To accelerate, at the request of the issuer, the termination of registration of any class of equity securities as provided in section 12(g)(4) of the Act, 15 U.S.C. 78/(g)(4), or as provided in 17 CFR 240.12g-4;

(d) To approve the withdrawal or striking from listing and registration of securities registered on any national securities exchange pursuant to section 12(d) of the Act, 15 U.S.C. 78/(d), and 17 CFR 240.12d2-1 and 240.12d2-2;

(e) To grant for a period not to exceed 60 da: or deny applications filed pursuant to section 12(g)(1) of the Act, 15 U.S.C. 78/(g)(1), for extensions of time within which to file registration statements:

(f) To authorize the use of forms of proxies, proxy statements, or other soliciting material within periods of time less than that prescribed in 17 CFR 240.14a-6, 17 CFR 240.14a-8(d) and 17 CFR 240.14a-11; to authorize the filing of information statements within periods of time less than that prescribed in 17 CFR 240.14c-5(a); and to authorize the filing of information pursuant to 17 CFR 240.14f-1, within periods of time less than prescribed in those sections;

(g) To grant or deny applications for confidential treatment filed pursuant to section 24(b) of the Act, 15 U.S.C. 78x(b) and 17 CFR 240.24b-2, and to revoke a grant of any such application for confidential treatment;

(h) Pursuant to instructions regarding financial statement requirements applicable to forms adopted under the Act:

(1) To extend the time for filing or to permit the omission of one or more financial statements therein required or the filing in substitution therefor of appropriate statements of comparable character; and

(2) To require the filing of other financial statements in addition to, or in substitution for, the statements therein required; and

(i) To approve or disapprove applications regarding unlisted trading privileges under section 12(f) of the Act. The provisions of 17 CFR 201.26 shall be applicable with regard to the delegations specified in this section.

# § 563d.210 Form and content of financial statements.

The financial statements required to be contained in filings with the Office under the Act are as set out in the applicable form and Regulation S-X, 17 CFR Part 210. Those financial statements, however, shall conform as to form and content to the requirements of § 563c.1 of this subchapter.

## Subpart B-Interpretations

# § 563d.801 Application of this subpart.

This subpart contains interpretations pertaining to the requirements of the Act and the rules and regulations thereunder as applied to savings associations by the Office.

## § 563d.802 Description of business.

(a) This section applies to the description-of-business portion of:

(1) Registration statements filed on Form 10 (Item 1) (17 CFR 249.210), (2) Proxy and information statements relating to mergers, consolidations, acquisitions, and similar matters (Item 14 of Schedule 14A and Item 1 of Schedule 14C) (17 CFR 240.14a-101 and 240.14c-101), and

(3) Annual reports filed on Form 10-K (Item 7) (17 CFR 249.310).

(b) The description of business should conform to the description of business required by Item 7 of Form PS under Part 563b of this subchapter.

(c) No repetitive disclosure is required by virtue of similar requirements in Item 7 of Form PS and Items 301 and 303 of Regulation S-K (17 CFR 229.301, 303). However, there should be included appropriate disclosure which arises by virtue of the registrant being a stock savings association. For example, the table regarding return on equity and assets, Item 7(d)(5), should include a line item for "dividend payout ratio (dividends declared per share divided by net income per share)."

## PART 563e—COMMUNITY REINVESTMENT

Sec.

563e.1 Authority.

563e.2 Purposes.

563e.3 Delineation of community.
563e.4 Community Reinvestment Act

statement.

563e.5 Files of public comments and recent

CRA statements. 563e.6 Public notice.

563e.7 Assessing the record of performance. 563e.8 Effect on applications.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 802, 91 Stat. 1147, as amended (12 U.S.C. 2901 et seq.).

# § 563e.1 Authority.

The provisions of this Part 563e are issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 et seq.); and section 5, as amended, and sections 3, 4, and 10, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, 1464, and 1467a).

#### § 563e.2 Purposes.

The purposes of this regulation are to encourage savings associations to help meet the credit needs of their local community or communities; to provide guidance to associations as to how the Office will assess the records of associations in satisfying their continuing and affirmative obligations to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods,

consistent with the safe and sound operation of those associations; and to provide for taking into account those records in connection with certain applications.

#### § 563e.3 Delineation of community.

(a) Each savings association shall prepare, and at least annually review, a delineation of the local community or communities that comprise its entire community, without excluding low- and moderate-income neighborhoods. Maps shall be used to portray community delineations. The reasonableness of the delineations will be reviewed by the Office's examiners.

(b) Except as provided in paragraph (c) of this section, a local community consists of the contiguous areas surrounding each office or group of offices, including any low- and moderate-income neighborhoods in those areas. More than one office of an association may be included in the same local community. Unless the Office determines otherwise, a community delineation need not take account of an off-premises electronic facility that receives deposits for more than one depository institution. In preparing its delineation, an association may use any

one of the three bases set forth below. (1) Existing boundaries such as those of standard metropolitan statistical areas (SMSA's) or counties in which the association's office or offices are located may be used to delineate a local community. Where appropriate, portions of adjacent areas should be included. The association may make adjustments in the case of areas divided by State borders or significant geographic barriers, or areas that are extremely large or of unusual configuration. In addition, a small association may delineate those portions of SMSA's or counties it reasonably may be expected

(2) An association may use its effective lending territory, which is defined as that local area or areas around each office or group of offices where it makes a substantial portion of its loans and all other areas equidistant from its offices as those areas. Adjustments such as those indicated in paragraph (b)(1) of this section may be made.

(3) An association may use any other reasonably delineated local area that meets the purposes of the CRA and does not exclude low- and moderate-income neighborhoods.

(c) An association whose business predominantly consists of serving persons who are on active duty or retired military personnel or their dependents and who are located outside of its local community or communities may delineate a "military community" for those customers, in addition to its local community or communities. Provisions of this part concerning local communities shall also apply to military communities, except that military communities shall be delineated by a written description rather than a map.

### § 563e.4 Community Reinvestment Act statement.

(a) Within 90 days after the effective date of this part, the board of directors of each association shall adopt a CRA statement for each delineated local community

(b) Each CRA statement shall include at least the following:

(1) The delineation of the local

community;

(2) A list of specific types of credit within certain categories, such as residential loans for 1- to 4-family dwelling units, residential loans for 5 dwelling units and over, housing rehabilitation loans, home improvement loans, small business loans, farm loans, community development loans, commercial loans, and consumer loans, that the association is prepared to extend within the local community; and

(3) A copy of the Community Reinvestment Act notice provided for in

§ 563e.6 of this part.

(c) Each association is encouraged to include the following in each CRA

(1) A description of how its current efforts, including special credit-related programs, help to meet community credit needs;

(2) A periodic report regarding its record of helping to meet community

credit needs; and

(3) A description of its efforts to ascertain the credit needs of its community, including efforts to communicate with members of its community regarding credit services.

(d) Each association's board of directors shall review each CRA statement at least annually and shall act upon any material change made in the . interim at its first regular meeting after the change. Such actions shall be noted in its minutes.

(e) Each current CRA statement shall be readily available for public

inspection:

(1) At the home office of the association; and

(2) At each office of the association in the local community delineated in the statement, except off-premises electronic deposit facilities.

(f) Copies of each current CRA statement shall be provided to the public upon request. An association may charge a fee not to exceed the cost of reproduction.

## § 563e.5 Files of public comments and recent CRA statements.

(a) Each association shall maintain files that are readily available for public inspection consisting of:

(1) Any signed, written comments received from the public within the past 2 years that specifically relate to any CRA statement or to the association's performance in helping to meet the credit needs of its community or communities:

(2) Any response to the comments that the association wishes to make; and

(3) Any CRA statements in effect

during the past 2 years.

- (b) These files shall not contain any comments or responses that reflect adversely upon the good name or reputation of any persons other than the association, or publication of which would violate specific provisions of law.
- (c) These files shall be maintained by each association as follows:
  - (1) All materials at the home office;
- (2) Those materials relating to each local community at a designated office in that community. .

#### § 563e.6 Public notice.

Within 90 days after the effective date of this part, each association shall provide, in the public lobby of each of its offices other than off-premises electronic deposit facilities, the public notice set forth below. Bracketed material shall be used only by associations having more than one local community.

#### Community Reinvestment Act Notice

The Federal Community Reinvestment Act (CRA) requires the Office of Thrift Supervision to evaluate our performance in helping to meet the credit needs of this community, and to take this evaluation into account when deciding on certain applications submitted by us. Your involvement is encouraged.

You may obtain our current CRA statement for this community in this office. [Current CRA statements for other communities served by us are available at our home office, located at \_

You may send signed, written comments about our CRA statement[s] or our performance in helping to meet community credit needs to [title and address of association official) and to the District Director located at (address). Your letter, together with any response by us, may be made public.

You may look at a file of all signed, written comments received by us within the past 2 years, any responses we have made to the comments, and all CRA statements in effect during the past 2 years at our office located

at (address). [You also may look at the file about this community at (name and address of designated office).]

You may ask to look at any comments received by the District Director.

You also may request from the District Director an announcement of applications covered by the CRA filed with the Office of Thrift Supervision.

# § 563e.7 Assessing the record of performance.

In connection with its examination of an association, the Office shall assess the record of performance of the association in helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operation of the association. The Office will review the association's CRA statement(s) and any signed, written comments retained by the association or the Office. In addition, the Office will consider the following factors in assessing an association's record of performance:

[a] Activities conducted by the association to ascertain the credit needs of its community, including the extent of the association's efforts to communicate with members of its community regarding the credit services being provided by the association;

(b) The extent of the association's marketing and special credit-related programs to make members of the community aware of the credit services offered by the association;

(c) The extent of participation by the association's board of directors in formulating the association's policies and reviewing its performance with respect to the purposes of the CRA;

 (d) Any practices intended to discourage applications for types of credit set forth in the association's CRA statement(s);

 (e) The geographic distribution of the association's credit extensions, credit applications and credit denials;

 Evidence of prohibited discriminatory or other illegal credit practices;

(g) The association's record of opening and closing offices and providing services at offices;

 (h) The association's participation, including investments, in local community development and redevelopment projects or programs;

(i) The association's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The association's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses or small farms;

(k) The association's ability to meet various community credit needs based on its financial condition and size, and legal impediments, local economic conditions and other factors; and

(l) Other factors that, in the Office's judgment, reasonably bear upon the extent to which an association is helping to meet the credit needs of its entire community.

## § 563e.8 Effect on applications.

(a) Assessments under this part shall be taken into account in determining whether to grant charters, branches and other deposit facilities, relocations, mergers, consolidations, acquisitions of assets or assumptions of liabilities, and savings and loan holding company acquisitions. Assessment of an applicant's record of performance may be the basis for denying an application.

(b) The Office will take into account any views expressed by State supervisory authorities with regard to whether State-chartered applicants are helping to meet the credit needs of their communities.

(c) The Office may consider the creditgranting record of any financial institution subsidiaries of savings and loan holding companies when such holding companies submit to the Office applications listed under paragraph (a) of this section.

# PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

563f.1 Authority, purpose, and scope.

563f.2 Definitions.

563f.3 General prohibitions.

563f.4 Permitted interlocking relationships.

563f.5 Grandfathered interlocking relationships.

563f.6 Changes in circumstances.
563f.7 Delegation of authority to grant

exemptions and extensions of time.
563f.8 Enforcement.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 201, 92 Stat. 3672, as amended (12 U.S.C. 3201 et seq.).

# § 563f.1 Authority, purpose, and scope.

(a) Authority. This part is issued under the provisions of the Depository Institution Management Interlocks Act, as amended ("Interlocks Act") (12 U.S.C. 3201 et seq.).

(b) Purpose and scope. The general purpose of the Interlocks Act and this Part is to foster competition by generally prohibiting a management official of a depository institution or depository holding company from also serving as a management official of another depository institution or depository holding company if the two organizations (1) are not affiliated and (2) are very large or are located in the same local area. This part applies to management officials of savings associations, savings and loan holding companies, and their affiliates.

### § 563f.2 Definitions.

For the purpose of this part, the following definitions apply:

(a) The term "Affiliate" has the meaning given in section 202 of the Interlocks Act. For purposes of section 202, an individual's shares include shares of members of his or her immediate family. For the purpose of section 202(3)(B) of the Interlocks Act, an affiliate relationship based on common ownership does not exist if the appropriate Federal supervisory agency or agencies determine, after giving the affected persons the opportunity to respond, that the asserted affiliation appears to have been established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the agencies will consider, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate with that person's ownership of shares in the other organization. "Immediate family includes spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(b) The term "Community" means city, town, or village, or contiguous or adjacent cities, towns, or villages. "Contiguous or adjacent cities, towns, or villages" means cities, towns, or villages" means cities, towns, or villages whose borders actually touch each other or are within ten road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is regarded as the boundary line of that city, town, or village for the purpose of this definition.

(c) The term "Depository holding company" means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act) having its principal office located in the United States.

(d) The term "Depository institution" means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered in the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a "depository institution."

(e) The term "Depository organization" means a depository institution or a depository holding

company.

(f)(1) The term "Management official" means:

(i) An employee or officer with management functions (including a

branch manager);
(ii) A director (including an advisory director or honorary director, except in the case of a depository institution with total assets of less than \$100,000,000);

(iii) A trustee of a business organization under the control of trustees (e.g., a mutual savings bank); or

(iv) Any person who has a representative or nominee serving in any such capacity.

(2) The term "Management official"

does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) Persons described in the provisos of section 202(4) of the Interlocks Act (12

U.S.C. 3201(4)).

(g) The term "Office" means a principal or branch office of a depository institution located in the United States. "Office" does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office, or any office of a depository holding company.

(h) The term "Person" means a natural

person, corporation, or other business.
(i) The term "Relevant metropolitan statistical area" means a Primary Metropolitan Statistical Area, a Metropolitan Statistical Area, or a Consolidated Metropolitan Statistical Area that is not comprised of designated Primary Metropolitan Areas as defined by the Office of Management and Budget.

(j) The term "Representative or nominee" means a person who serves as a management official and has an express or implied obligation to act on behalf of another person with respect to management responsibilities. Whether a

person is a "representative or nominee" depends upon the facts in individual cases, and the appropriate Federal supervisory agency or agencies will determine, after giving the affected persons an opportunity to respond, whether a person is a "representative or nominee." Certain relationships, including family, employment, or agency relationships, or the ability and exercise of ability by a shareholder of a depository organization to elect a director may be evidence of such an express or implied obligation by the management official to another person. For the purposes of this definition, "person" shall include only natural persons.

(k) The term "Savings association" means:

(1) Any Federal savings association (as defined in § 1813(b)(2) of the Federal Deposit Insurance Act);

(2) Any State savings association (as defined in § 1813(b)(3) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) Any corporation (other than a bank as defined in § 1813(a)(1) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation, that the Board of Directors of the Federal Deposit Insurance Corporation and the Director of the Office of Thrift Supervision jointly determine to be operating in substantially the same manner as a savings association.

(l) The term "Total assets" means assets measured on a consolidated basis as of the close of the organization's last fiscal year. The total assets of a depository holding company include the total assets of all its subsidiary affiliates, except that "total assets" of a diversified savings and loan holding company as defined in section 10(a)(1)(F) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a(a)(1)(F)) and 12 CFR 583.11, or of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)), means only the total assets of its depository institution affiliate. "Total assets" of a United States branch or agency of a foreign commercial bank means total assets of such branch or agency itself exclusive of the assets of the other offices of the foreign commercial bank.

(m) The term "United States" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

### § 563f.3 General prohibitions.

- (a) Community. A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:
- (1) Both are depository institutions and each has an office in the same community;
- (2) Offices of depository institution affiliates of both are located in the same community; or
- (3) One is a depository institution that has an office in the same community as a depository institution affiliate of the
- (b) Relevant Metropolitan Statistical Area. A management official of a depository organization may not serve at the same time as a management official of another depository organization not affiliated with it if:
- (1) Both are depository institutions, each has an office in the same relevant metropolitan statistical area, and either institution has total assets of \$20 million
- (2) Offices of depository institution affiliates of both are located in the same relevant metropolitan statistical area and either of the depository institution affiliates has total assets of \$20 million or more; or
- (3) One is a depository institution that has an office in the same relevant metropolitan statistical area as a depository institution affiliate of the other and either the depository institution or the depository institution affiliate has total assets of \$20 million or
- (c) Major assets. Without regard to location, a management official of a depository organization with total assets exceeding \$1 billion or a management official of any affiliate of the greater than \$1 billion depository organization may not serve at the same time as a management official of a nonaffiliated depository organization with total assets exceeding \$500 million or a management official of any affiliate of the greater than \$500 million depository organization.

### § 563f.4 Permitted interlocking relationships.

- (a) Interlocking relationships permitted by statute. The prohibitions of § 563f.3 of this part do not apply in the case of any one or more of the following organizations or their subsidiaries:
- (1) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(2) A corporation operating under section 25 or 25(a) of the Federal Reserve Act ("Edge Corporations" and "Agreement Corporations");

(3) A depository organization that has been placed formally in liquidation, or that is in the hands of a receiver. conservator, or other official exercising a similar function;

(4) A credit union being served by a management official of another credit

(5) A State-chartered savings and loan

guaranty corporation; or

(6) A Federal Home Loan Bank or any other bank organized solely for the purpose of serving depository institutions (commonly referred to as "bankers' banks") or solely for the purpose of providing securities clearing services and services related thereto for depository institutions, securities companies, or both.

(7) A depository organization which-(i) is determined by the Office of Thrift Supervision to be closed or in

danger of closing; and (ii) is acquired by another depository organization, during the 5-year period beginning on the date of the acquisition of the depository organization described in paragraph (a)(7)(i) of this section.

(8)(i) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a(a)(1)(F) and 12 CFR 583.11)) with respect to the service of a director of such company who is also a director of any nonaffiliated depository institution or depository holding company (including a savings and loan holding company) if-

(A) notice of the proposed dual service is given by such diversified savings and loan holding company to-

(1) the appropriate Federal supervisory agency for such company:

(2) the appropriate Federal supervisory agency for the nonaffiliated depository institution or depository holding company of which such person is also a director, not less than 60 days before such dual service is proposed to begin; and

(B) the proposed dual service is not disapproved by any such appropriate Federal supervisory agency before the

end of such 60-day period

(ii) Any appropriate Federal supervisory agency may disapprove. under paragraph (a)(B)(i)(B) of this section, a notice of proposed dual service by any individual if such agency finds that-

(A) the dual service cannot be structured or limited so as to preclude the dual service's resulting in a monopoly or substantial lessening of

competition in financial services in any part of the United States;

(B) the dual service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(C) the diversified savings and loan holding company has neglected, failed, or refused to furnish all the information

required by such agency.

(iii) Any appropriate Federal supervisory egency may, at any time after the end of the 60-day period referred to in paragraph (a)(8)(i) of this section, require that any dual service by any individual which was not disapproved by such agency during such period be terminated if a change in circumstance occurs with respect to any depository institution or depository holding company of which such individual is a director that would have provided a basis for disapproval of the dual service during such period.

(9) Any savings association or any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph (a)(9) shall apply only with regard to service by a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Office of Thrift Supervision has determined that such service is consistent with the purposes of this Act and the Home Owners' Loan

(b) Interlocking relationships permitted by agency order. A management official or a prospective management official of a savings association, a savings and loan holding company, or an affiliate of either may enter into an otherwise prohibited interlocking relationship with a depository organization that falls within one of the classifications enumerated in this paragraph (b) if the Federal supervisory agency (as specified in section 207 of the Interlocks Act) of the organization that falls within one of the classifications determines that the relationship meets the requirements set forth in this paragraph (b). If the depository organization that fells within one of the classifications is not subject to the interlocks regulations of any of the Federal supervisory agencies, then the Office of Thrift Supervision shall determine whether the relationship

meets the requirements of this paragraph.

(1) Organization in low-income area: minority or women's organization. A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations is:

(i) Located, or to be located, in a lowincome or other economically depressed

[ii] Controlled or managed by persons who are members of minerity groups or by women, subject to the following conditions:

(A) The relationship is necessary to provide management or operating expertise to the organization specified in paragraph (b)(1)(i) or (b)(1)(ii) of this section;

(B) no interlocking relationship permitted by this paragraph shall continue for more than five years; and

(C) other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(2) Newly chartered organization. A person may serve at the same time as a management official of two or more depository organizations if one of the

depository organizations (or an affiliate thereof) is a newly chartered organization, subject to the following

conditions:

(i) The relationship is necessary to provide management or operating expertise to the newly created organization;

(ii) No interlocking relationship permitted by this subparagraph shall continue for more than two years after the newly chartered organization commences business; and

(iii) Other conditions in addition to er in lieu of the foregoing may be imposed by the appropriate Federal supervisory

agency in any specific case.

(3) Conditions endangering safety or soundness. A person may serve at the same time as a management official of two or more depository organizations (or affiliates thereof) if one of the depository organizations faces conditions endangering the organization's safety or soundness, Provided:

(i) The relationship is necessary to provide management or operating expertise to the organization facing conditions endangering safety or soundness; and

(ii) Other conditions in addition to or in lieu of the foregoing may be imposed by the appropriate Federal supervisory agency in any specific case.

(4) Organization sponsoring credit union. A management official of a depository organization or its affiliate may serve at the same time as a management official of a federallyinsured credit union that is sponsored by the depository organization or its affiliate primarily to serve employees of the depository organization.

(5) Loss of management officials due to changes in circumstances. If a depository organization is likely to lose 30 percent or more of its directors or of its total management officials due to a change in circumstances described in § 563f.6 of this part, the affected management officials may continue to serve in excess of the time periods specified in such section, provided that:

(i) The depository organization's prospective loss of management officials or directors will be disruptive to the internal management of the depository

organization;

(ii) The depository organization demonstrates that, absent a grant of relief in accordance with paragraph (b)(5)(i) of this section, 30 percent or more of either its directors or management officials are likely to sever their interlocking relationships with the depository organization;

(iii) If the prospective losses of management officials resulted from more than one change in circumstances, such changes in circumstances must have occurred within a 15-month period;

(iv) The depository organization develops a plan for the orderly termination of service by each such management official over a period not longer than 30 months after the change in circumstances which caused the person's service to become prohibited (but if the loss of management officials is the result of more than one change in circumstances, the 30-month period is measured from the first change in circumstances).

Other conditions in addition to or in lieu of the foregoing may be imposed by the Federal supervisory agency. In evaluating requests made pursuant to paragraph (b)(5) of this section, the Federal supervisory agency will presume that a director who also is a paid, full-time employee of the depository organization, absent unusual circumstances, will not resign from the position of director with that depository organization. This presumption may, however, be rebutted by a showing that such unusual circumstances exist.

(c) Interlocking relationships permitted pursuant to Federal Deposit Insurance Act. A management official or prospective management official of a

depository organization may enter into an otherwise prohibited interlocking relationship with another depository organization for a period of up to ten years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C.

1823(k)(1)(A)(v)).

(d) Diversified savings and loan holding company. Notwithstanding § 563f.3 of this part, a person who serves as a management official of a depository organization and of a nondepository organization (or any subsidiary thereof) is not prohibited from continuing the interlocking service when the nondepository organization becomes a diversified savings and loan holding company as that term is defined in section 10(a)(1)(F) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1467a(a)(1)(F)) and 12 CFR 583.11 and may continue to serve until November 10, 1993, despite the occurrence of any changes in circumstances, whether or not those changes in circumstances occurred prior to November 30, 1983.

### § 563f.5 Grandfathered Interlocking relationships.

A person whose interlocking service in a position as a management official of two or more depository organizations began prior to November 10, 1978, and was not immediately prior to that date in violation of section 8 of the Clayton Act (15 U.S.C. 19) is not prohibited from continuing to serve in such interlocking positions until November 10, 1993. Any management official who has been required to terminate or who has terminated service in one or more such interlocking positions as a result of a merger, acquisition, consolidation or establishment of offices that was formerly defined as a change in circumstances in 12 CFR 563f.6(a) (1981) is not prohibited from continuing or resuming such service until November 10, 1993.

## § 5631.6 Changes in circumstances.

(a) Nongrandfathered interlocks. If a person's service as a management official is not grandfathered under § 563f.5 of this part, that person's service must be terminated if a change in circumstances causes such service to become prohibited. Such a change may include, but is not limited to, an increase in asset size of an organization due to natural growth; a change in relevant metropolitan statistical area or community boundaries, or the designation of a new relevant metropolitan statistical area; an acquisition, merger, or consolidation by

the depository organization; the establishment of an office; or a disaffiliation.

(b) Grace period. If a person's nongrandfathered service as a management official becomes prohibited under paragraph (a) of this section, the person may continue to serve as a management official of all organizations involved in the prohibited interlocking relationship until 15 months after the date on which the change in circumstances that caused the interlock to become prohibited occurred, unless the appropriate Federal supervisory agency or agencies take affirmative action in an individual case to establish a shorter period.

#### § 563f.7 Delegation of authority to grant exemptions and extensions of time.

The District Director may grant or withhold exemptions under § 563f.4 of this part, with the exceptions of §§ 563f.4(a)(7), (a)(8) and (a)(9), and extensions of time under § 563f.6 of this part, provided the exemption or extension request does not present a significant issue of law or policy and would not establish a precedent of national significance. Exemptions under §§ 563f.4(a)(7), (a)(8) and (a)(9) of this part may be granted, withheld, or terminated by the Senior Deputy Director for Supervision (Operations). with the concurrence of the Chief Counsel, or their respective designees, provided the exemption request or termination does not present a significant issue of law or policy and would not establish a precedent of national significance. Exemptions under any paragraph of § 563f.4 of this part shall be granted under this delegated authority if all relevant conditions specified in that paragraph, if any, are met. Extensions under § 563f.6 of this part shall be granted unless the District Director determines that the extension would be so contrary to the best interests of the depository institutions as to outweigh the disruption caused by the earlier departure of management officials in interlocking relationships. For applications not approved, the District Director, or the Senior Deputy Director for Supervision (Operations), as the case may be, shall give the applicant prompt notice, in writing, citing the specific basis for disapproval. Except as noted below, applications made pursuant to this section should be submitted to the District Director for the District that has supervisory responsibility over the depository institution or depository holding company wherein the management official is, or would be, in a prohibited

management interlock position. Applications made pursuant to §§ 563f.4(a)(7), (a)(8) and (a)(9) of this part shall be filed concurrently as follows: one copy with the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, labeled "Dockets Copy;" one (manually executed) copy with the Chief Counsel. Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; one copy with the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and one copy with the District Director for the district that has supervisory responsibility over the savings and loan holding company wherein the management official is, or would be, in a prohibited management interlock position.

#### § 563f.8 Enforcement.

The Office of Thrift Supervision administers and enforces the Interlocks Act with respect to savings associations, savings and loan holding companies, and their affiliates, and in addition to the other remedies and sanctions available under applicable law, may refer the case of a prohibited interlocking relationship involving any such organization, regardless of the nature of any other organization involved in the prohibited relationship, to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a savings association or a savings and loan holding company is primarily subject to the regulation of another Federal supervisory agency. then the Office of Thrift Supervision does not administer and enforce the Interlocks Act with respect to that affiliate.

# PART 563g—SECURITIES OFFERINGS

Sec.

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in certain exempt offerings. 563g.22 Delegation of authority.

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 3(b), 12-14, 16, 23, 48 Stat. 882, 892, 894-896, 901, as amended (15 U.S.C. 78c(b), 78/, m, n, p, w).

## § 563g.1 Definitions.

(a) For purposes of this part, the following definitions apply:

(1) Accredited investor means the same as in Commission Rule 501(a) (17 CFR 230.501(a)) under the Securities Act, and includes any savings association.

(2) Commission means the Securities

and Exchange Commission.

(3) Dividend or interest reinvestment plan means a plan which is offered solely to existing security holders of the savings association which allows such persons to reinvest dividends or interest paid to them on securities issued by the savings association, and which also may allow additional cash amounts to be contributed by the participants in the plan, provided that the securities to be issued are newly issued, or are purchased for the account of plan participants, at prices not in excess of current market prices at the time of purchase, or at prices not in excess of an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of purchase.

(4) Employee benefit plan means any purchase, savings, option, rights, bonus, ownership, appreciation, profit sharing, thrift, incentive, pension or similar plan solely for officers, directors or

employees.

(5) Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a-

78ii).

(6) Filing date means the date on which a document is actually received during business hours, 9:00 a.m. to 5:00 p.m. Eastern Standard Time, by the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. However if the last date on which a document can be accepted falls on a Saturday, Sunday, or holiday, such document may be filed on the next business day.

(7) Issuer means a savings association which issues or proposes to issue any

(8) Offer, "Sale" or "sell." For purposes of this part, the term "offer,"

"offer to sell," or "offer for sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. However, these terms shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with the issuer. "Sale" and "sell" includes every contract to sell or otherwise dispose of a security or interest in a security for value. Every offer or sale of a warrant or right to purchase or subscribe to another security of the same or another issuer. as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

(9) Person means the same as in \$ 563b.2(a)(27) of this subchapter, and includes a savings association.

(10) Purchase and buy mean the same as in § 563b.2(a)(29) of this subchapter.

(11) Savings association has the same meaning as in part 561 of this subchapter, and includes a federally-chartered savings association in organization under this chapter, and a state-chartered savings association in organization which is granted conditional approval of insurance of accounts by the Federal Deposit Insurance Corporation. In addition, for purposes of § 563g.2 of this part, "savings association" includes any underwriter participating in the distribution of securities of a savings association.

(12) Securities Act means the Securities Act of 1933 (15 U.S.C. 77a-

77aa). (13) Security means any nonwithdrawable account, note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profitsharing agreement, collateral-trust certificate, preorganization or subscription, transferable share, investment contract, voting trust certificate or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing, except

that a "security" shall not include an account insured, in whole or in part, by the Federal Deposit Insurance Corporation. Nothing in this part shall affect the applicability of § 563.10 of this

subchapter.

(14) Underwriter means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission and such term shall also not include any person who has continually held the securities being transferred for a period of two (2) consecutive years provided that the securities sold in any one (1) transaction shall be less than ten percent (10%) of the issued and outstanding securities of the same class. The following shall apply for the purpose of determining the period securities have been held:

(i) Stock dividends, splits and recapitalizations. Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the

recapitalization.

(ii) Conversions. If the securities sold were acquired from the issuer for consideration consisting solely of other securities of the same issuer surrendered for conversion, the securities so acquired shall be deemed to have been acquired at the same time as the securities surrendered for

conversion.

(iii) Contingent issuance of securities. Securities acquired as a contingent payment of the purchase price of an equity interest in a business, or the assets of a business, sold to the issuer or an affiliate of the issuer shall be deemed to have been acquired at the time of such sale if the issuer was then committed to issue the securities subject only to conditions other than the payment of further consideration for such securities. An agreement entered into in connection with any such purchase to remain in the employment of, or not to compete with, the issuer or affiliate or the rendering of services pursuant to such agreement shall not be deemed to be the payment of further consideration for such securities.

(iv) Pledged securities. Securities which are bona fide pledged by any person other than the issuer when sold by the pledgee, or by a purchaser, after a default in the obligation secured by the pledge, shall be deemed to have been acquired when they were acquired by the pledgor, except that if the securities were pledged without recourse they shall be deemed to have been acquired by the pledgee at the time of the pledge or by the purchaser at the time of purchase.

(v) Gifts of securities. Securities acquired from any person, other than the issuer, by gift shall be deemed to have been acquired by the donee when they

were acquired by the donor.

(vi) Trusts. Securities acquired from the settler of a trust by the trust or acquired from the trust by the beneficiaries thereof shall be deemed to have been acquired when they were

acquired by the settler.

(vii) Estates. Securities held by the estate of a deceased person or acquired from such an estate by the beneficiaries thereof shall be deemed to have been acquired when they were acquired by the deceased person, except that no holding period is required if the estate is not an affiliate of the issuer or if the securities are sold by a beneficiary of the estate who is not such an affiliate.

(viii) Exchange transactions. A person receiving securities in a transaction involving an exchange of the securities of one issuer for securities of another issuer shall be deemed to have acquired the securities received when such person acquired the securities exchanged.

(b) A term not defined in this part but defined in another part of this subchapter, when used in this part, shall have the meanings given in such other part, unless the context otherwise

requires.

(c) When used in the rules, regulations, or forms of the Commission referred to in this part, the term "Commission" shall be deemed to refer to the Office, the term "registrant" shall be deemed to refer to an issuer defined in this part, and the term "registration statement" or "prospectus" shall be deemed to refer to an offering circular filed under this part, unless the context otherwise requires.

# § 563g.2 Offering circular requirement.

(a) General. No savings association shall offer or sell, directly or indirectly, any security issued by it unless:

(1) The offer or sale is accompanied or preceded by an offering circular which includes the information required by this part and which has been filed and declared effective pursuant to this part; or

(2) An exemption is available under this part.

(b) Communications not deemed an offer. The following communications shall not be deemed an offer under this section:

(1) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of Commission Rule 135 (17 CFR 230.135) under the Securities Act;

(2) Subsequent to filing an offering circular, any notice circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of Commission Rule 134 (17 CFR 230.134) under the Securities Act; and

(3) Oral offers of securities covered by an offering circular made after filing the offering circular with the Office.

(c) Preliminary offering circular.

Notwithstanding paragraph (a) of this section, a preliminary offering circular may be used for an offer of any security prior to the effective date of the offering circular if:

(1) The preliminary offering circular has been filed pursuant to this part;

(2) The preliminary offering circular includes the information required by this part, except for the omission of information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(3) The offering circular declared effective by the Office is furnished to the purchaser prior to, or simultaneously with, the sale of any such security.

#### § 563g.3 Exemptions.

The offering circular requirement of § 563g.2 of this part shall not apply to an issuer's offer or sale of securities:

(a) Complying with the requirements for retail repurchase agreements of § 563.84 of this subchapter, except where the issuer has a regulatory capital deficiency under that section.

(b) Exempt from registration under either section 3(a) or section 4 of the Securities Act, but only by reason of an exemption other than section 3(a)(5) (for regulated savings associations), and section 3(a)(11) (for intrastate offerings) of the Securities Act;

(c) In a conversion from the mutual to the stock form of organization pursuant to part 563b of this subchapter, except for a supervisory conversion undertaken pursuant to subpart C of part 563b of this subchapter;

(d) In a non-public offering which satisfies the requirements of \$ 563g.4 of

(e) That are debt securities issued in denominations of \$100,000 or more, which are fully collateralized by cash, any security issued, or guaranteed as to principal and interest, by the United States, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association or by interests in mortgage notes secured by real property;
(f) Distributed endusively abroad to

foreign nationa wided, That (1) the offering is made sect to safeg reasonably designed to preclude ect to safeguards distribution or realistribution of the securities within, or to nationals of, the United States, and (2) such safeguards include, without limitation, measures that would be sufficient to ensure that registration of the securities would not be required if the securities were not exempt under the Securities Act; or

(g) To its officers, directors or employees pursuant to an employee benefit plan or a dividend or interest reinvestment plan, and provided that any such plan has been approved by the majority of shareholders present in person or by proxy at an annual or special meeting of the shareholders of

the savings association.

#### § 563g.4 Non-public offering.

Offers and sales of securities by an issuer that satisfy the conditions of paragraph (a) or (b) of this section and the requirements of paragraphs (c) and (d) of this section shall be deemed to be transactions not involving any public offering within the meaning of section 4(2) of the Securities Act and §§ 563g.3(b) and 563g.3(d) of this part. However, an issuer shall not be deemed to be not in compliance with the provisions of this section solely by reason of making an untimely filing of the notice required to be filed by paragraph (c) of this section so long as the notice is actually filed and all other conditions and requirements of this section are satisfied.

(a) Regulation D. The offer and sale of all securities in the transaction satisfies the Commission's Regulation D (17 CFR 230.501-230.506), except for the notice requirements of Commission Rule 503 (7 CFR 230,503) and the limitations on resale in Commission Rule 502(d) (17

CFR 230.502(d)).

(b) Sales to 35 persons. The offer and sale of all securities in the transaction satisfies each of the following conditions:

(1) Sales of the security are not made to more than 35 persons during the offering period, as determined under the

integration provisions of Commission Rule 502(a) (17 CFR 230.502(a)). The number of purchasers referred to above is exclusive of any accredited investor, officer, director or affiliate of the issuer. For purposes of paragraph (b) of this section, a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization which was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person.

(2) All purchasers either have a preexisting personal or business relationship with the issuer or any of its officers, directors or controlling persons, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer. directly or indirectly, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of

any advertisement.

(c) Filing of notice of sales. Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to this section, the issuer, shall file with the Office a report describing the results of the sale of securities as required by § 563g.12(b) of this part.

(d) Limitation on resale. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of § 563g.1(a)(14) of this part, which reasonable care shall include, but not be

limited to, the following:

(1) Reasonable inquiry to determine if the purchaser is acquiring the securities for the purchaser or for other persons;

(2) Written disclosure to each purchaser prior to the sale that the securities are not offered by an offering circular filed with, and declared effective by, the Office pursuant to § 563g.2 of this part, but instead are being sold in reliance upon the exemption from the offering circular

requirement provided for by this section:

(3) Placement of a legend on the certificate, or other document evidencing the securities, indicating that the securities have not been offered by an offering circular filed with, and declared effective by, the Office and that due care should be taken to ensure that the seller of the securities is not an underwriter within the meaning of § 563g.1(a)(14) of this part.

#### § 563g.5 Filing and signature requirements.

(a) Procedures. An offering circular, amendment, notice, report, or other document required by this part shall, unless otherwise indicated, be filed in accordance with the requirements of § 563b.8(e)(1), (e)(3) and (e)(4), (f) through (q), and (s), of this subchapter.

(b) Number of copies. (1) Unless otherwise required, any filing under this part shall include 10 copies of the document to be filed with the Office, as

(i) Seven copies, which shall include one manually signed copy with exhibits, three conformed copies with exhibits, and three conformed copies without exhibits, to the Chief Counsel, Corporate and Securities Division; and

(ii) Three copies, which shall include one manually signed copy with exhibits and two conformed copies without exhibits, to the District Director.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, 25 copies of the offering circular used shall be filed with the Office, as follows: 22 copies to the Chief Counsel, Corporate and Securities Division, and three copies to the District Director.

(3) After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until 10 copies have been filed with the Office in the manner required.

(c) Signature. (1) Any offering circular, amendment, or consent filed with the Office pursuant to this part shall include an attached manually signed signature page which authorizes the filing and has

been signed by:

(i) The issuer, by its duly authorized representative;

- (ii) The issuer's principal executive officer;
- (iii) The issuer's principal financial officer;
- (iv) The issuer's principal accounting officer: and

- (v) At least a majority of the issuer's directors.
- (2) Any other document filed pursuant to this part shall be signed by a person authorized to do so.
- (3) At least one copy of every document filed pursuant to this part shall be manually signed, and every copy of a document filed shall:
- (i) Have the name of each person who signs typed or printed beneath the signature;
- (ii) State the capacity or capacities in which the signature is provided;
- (iii) Provide the name of each director of the issuer, if a majority of directors is required to sign the document; and
- (iv) With regard to any copies not manually signed, bear typed or printed signatures.

### § 563g.6 Effective date.

- (a) Except as provided for in paragraph (d) of this section, an offering circular filed by a savings association shall be deemed to be automatically declared effective by the Office on the twentieth day after filing or on such earlier date as the Office may determine for good cause shown.
- (b) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed.
- (c) The period until automatic effectiveness under this section shall be stated at the bottom of the facing page of the Form OC or any amendment.
- (d) The effectiveness will be delayed if a duly authorized amendment, telegram confirmed in writing, or letter states that the effective date is delayed until a further amendment is filed specifically stating that the offering circular will become effective in accordance with this section.
- (e) An amendment filed after the effective date of the offering circular shall become effective on such date as the Office may determine.
- (f) If it appears to the Office at any time that the offering circular includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, then the Office may pursue any remedy it is authorized to pursue under section 5(d) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. 1464(d)) or section 8 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1818), including, but not limited to, institution of cease-and-desist proceedings.

§ 563g.7 Form, content, and accounting.

(a) Form and content. Any offering circular or amendment filed pursuant to this part shall:

(1) Be filed under cover of Form OC, which is under part 563b of this subchapter;

(2) Comply with the requirements of Items 3 and 4 of Form OC and the requirements of all items of the form for registration (17 CFR part 239) that the issuer would be eligible to use were it required to register the securities under the Securities Act;

(3) Comply with all item requirements of the Form S-1 (17 CFR part 239) for registration under the Securities Act, if the association issuing the securities is not in compliance with the Office's regulatory capital requirements during the time the offering is made;

(4) Where a form specifies that the information required by an item in the Commission's Regulation S-K (17 CFR part 229) should be furnished, include such information and all of the information required by Item 7 of Form PS, which is under part 563b of this subchapter;

(5) Include after the facing page of the Form OC a cross-reference sheet listing each item requirement of the form for registration under the Securities Act and indicate for each item the applicable heading or subheading in the offering circular under which the required information is disclosed;

(6) Include in part II of the Form OC the applicable undertakings required by the form for registration under the Securities Act;

(7) If the issuer has not previously been required to file reports pursuant to section 13(a) of the Exchange Act or § 563g.18 of this part, include in part II of Form OC the following undertaking: "The issuer hereby undertakes, in connection with any distribution of the offering circular, to have a preliminary or effective offering circular including the information required by this part distributed to all persons expected to be mailed confirmations of sale not less than 48 hours prior to the time such confirmations are expected to be mailed."

(8) In offerings involving the issuance of options, warrants, subscription rights or conversion rights within the meaning of § 563g.1(a)(8) of this part, include in part II of Form OC an undertaking to provide a copy of the issuer's most recent audited financial statements to persons exercising such options, warrants or rights promptly upon receiving written notification of the exercise thereof;

(9) Include as supplemental information and not as part of the Form

OC and only with respect to de novo offerings, a copy of the application for permission to organize as submitted to the Office for federally-chartered associations, or a copy of the application for insurance of accounts as submitted to the Federal Deposit Insurance Corporation for state-chartered associations; and

(10) In addition to the information expressly required to be included by this section, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) Accounting requirements. To be declared effective an offering circular or amendment shall satisfy the accounting requirements in subpart A of part 563c of this subchapter.

# § 563g.8 Use of the offering circular.

(a) An offering circular or amendment declared effective by the Office shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than 16 months prior to such use.

(b) An offering circular filed under § 563g.5(b)(3) of this part shall not extend the period for which an effective offering circular or amendment may be used under paragraph (c) of this section.

(c) If any event arises, or change in fact occurs, after the effective date and such event or change in fact, individually or in the aggregate, results in the offering circular containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the offering circular not misleading under the circumstances, then no offering circular, which has been declared effective under this part, shall be used until an amendment reflecting such event or change in fact has been filed with, and declared effective by, the Office.

# § 563g.9 Escrow requirement.

(a) Any funds received in an offering which is offered and sold on a best efforts all-or-none condition or with a minimum-maximum amount to be sold shall be held in an escrow or similar separate account until such time as all of the securities are sold with respect to a best efforts all-or-none offering or the stated minimum amount of securities are sold in a minimum-maximum offering.

(b) If the amount of securities required to be sold under escrow conditions in paragraph (a) of this section are not sold within the time period for the offering as disclosed in the offering circular, all funds in the escrow account shall be promptly refunded unless the Office otherwise approves an extension of the offering period upon a showing of good cause and provided that the extension is consistent with the public interest and the protection of investors.

# § 563g.10 Unsafe or unsound practices.

(a) No person shall directly or indirectly,

(1) Employ any device, scheme or

artifice to defraud,

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(3) Engage in any act, practice, orcourse of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any security of a savings association.

- (b) Violations of this section shall constitute an unsafe or unsound practice within the meaning of section (3)(a) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1462a(a), and section 8 of the Federal Deposit Insurance Act, as amended, 12 U.S.C.
- (c) Nothing in this section shall be construed as a limitation on the applicability of section 10(b) of the Exchange Act (15 U.S.C. 78)(b)) or Rule 10b-5 promulgated thereunder (17 CFR 240.10b-5).

## § 563g.11 Withdrawal or abandonment.

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state the grounds upon which it is made. Any document withdrawn will not be removed from the files of the Office, but will be marked "Withdrawn upon the request of the

issuer on (date)."

(b) When an offering circular or amendment has been on file with the Office for a period of nine months and has not become effective, the Office may, in its discretion, determine whether the filing has been abandoned. after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this part or be withdrawn within 30 days after the date of such notice. When a filing is abandoned, the filing will not be removed from the files of the Office, but will be marked "Declared abandoned by the Office on (date)."

# § 563g.12 Securities sale report.

(a) Within 30 days after the first sale of the securities, every six months after such 30 day period and not later than 30 days after the later of the last sale of securities in an offering pursuant to \$563g.2 of this part or the application of the proceeds therefrom, the issuer shall file with the Office a report describing the results of the sale of the securities and the application of the proceeds, which shall include all of the information required by Form G-12 set forth at \$563g.20 of this part and shall also include the following:

- (1) The name, address, and docket number of the issuer;
- (2) The title, number, aggregate and per-unit offering price of the securities sold:
- (3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees:
- (4) The aggregate and per-unit dollar amounts of the net proceeds raised, and the use of proceeds therefrom; and
- (5) The number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities after the issuance of the securities or termination of the offer.
- (b) Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to § 563g.4 of this part, the issuer shall file with the Office a report describing the results of the sale of securities, which shall include all of the information required by Form G-12 set forth at § 563g.20 of this part, and shall also include the following:
- (1) All of the information required by paragraph (a) of this section; and
- (2) A detailed statement of the factual and legal grounds for the exemption claimed.

# § 563g.13 Public disclosure and confidential treatment.

- (a) Any offering circular, amendment, exhibit, notice, or report filed pursuant to this part will be publicly available. Any other related documents will be treated in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and parts 503 and 505 of this chapter.
- (b) Any requests for confidential treatment of information in a document required to be filed under this part shall be made as required under Commission Rule 24b-2 (17 CFR 240.24b-2) under the Exchange Act.

#### § 563g.14 Walver.

- (a) The Office may waive any requirement of this part, or any required information:
- (1) Determined to be unnecessary by the Office;
- (2) In connection with a transaction approved by the Office for supervisory reasons, or
- (3) Where a provision of this part conflicts with a requirement of applicable state law.
- (b) Any condition, stipulation or provision binding any person acquiring a security issued by a savings association which seeks to waive compliance with any provision of this part shall be void, unless approved by the Office.

# § 563g.15 Requests for Interpretive advice or waiver.

Any requests to the Office for interpretive advice or a waiver with respect to any provision of this part shall satisfy the following requirements:

(a) A copy of the request, including any attachments, shall be filed with the Chief Counsel, Corporate and Securities Division;

(b) The provisions of this part to which the request relates, the participants in the proposed transaction, and the reasons for the request, shall be specifically identified or described; and

(c) The request shall include a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

# § 563g.16 Delayed or continuous offering and sale of securities.

Any offer or sale of securities under § 563g.2 of this part may be made on a continuous or delayed basis in the future, if:

- (a) The securities would satisfy all of the eligibility requirements of the Commission's Rule 415, 17 CFR 230.415;
   and
- (b) The association issuing the securities is in compliance with the Office's regulatory capital requirements during the time the offering is made.

# § 563g.17 Direct sales of securities at an office.

Securities of a savings association or an affiliate may only be offered or sold at an office of a savings association or an affiliate, if:

 (a) No commissions are paid to any employee or other person;

(b) No offers or sales are made by tellers or at the teller counter, or by comparable persons at comparable locations;

(c) Offers and sales are made only by regular, full-time employees; and

(d) The association issuing the securities is in compliance with the Office's regulatory capital requirements during the time the offering is made, except that such compliance is not required for repurchase agreements issued in compliance with § 563.84 of this subchapter.

# § 563g.18 Current and periodic reports.

(a) Each savings association which files an offering circular which becomes effective pursuant to this part, after such effective date, shall file with the Office periodic and current reports on Forms 8-K, 10-Q and 10-K as may be required by section 13 of the Exchange Act (15 U.S.C. 78m) as if the securities sold by such offering circular were securities registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78/). The duty to file periodic and current reports under this section shall be automatically suspended if and so long as any issue of securities of the savings association is registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78/). The duty to file under this section shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such offering circular became effective, if, at the beginning of such fiscal year, the securities of each class to which the offering circular relates are held of record by less than three hundred persons.

(b) For purposes of registering securities under section 12(b) or 12(g) of the Exchange Act, an issuer subject to the reporting requirements of paragraph (a) of this section may use the Commission's registration statement on Form 10 or Form 8-A or 8-B as applicable.

# § 563g.19 Approval of the security.

Any securities of a savings association which are not exempt under this part and are offered or sold pursuant to an offering circular which becomes effective under this part, are deemed to be approved as to form and terms for purposes of § 563.1 of this subchapter.

#### § 563g.20 Form for securities sale report.

Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552

[Form G-12]

Securities Sale Report Pursuant to Section 563g.12

Address:

If in organization, state the date of FDIC certification of insurance of accounts:

State the title, number, aggregate and perunit offering price of the securities

State the aggregate and per-unit dollar amounts of actual itemized offering expenses, discounts, commissions, and other fees:

State the aggregate and per-unit dollar amounts of the net proceeds raised:

Describe the use of proceeds. If unknown, provide reasonable estimates of the dollar amount allocated to each purpose for which the proceeds will be used:

State the number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities at the close or termination of the offering:

For a non-public offering, also state the factual and legal grounds for the exemption claimed (attach additional pages if necessary):

Telephone No.:

This issuer has duly caused this securities sale report to be signed on its behalf by the undersigned person.

Date of securities sale report

Signature: -Name: -Title: -

Instruction: Print the name and title of the signing representative under his or her signature. Ten copies of the securities sale report should be filed, including one copy manually signed, as required under 12 CFR 563g.5.

# Attention

Intentional misstatements or omissions of fact constitute violations of Federal law (See 18 U.S.C. 1001 and 12 CFR 563.180(b)).

# § 563g.21 Filing of copies of offering circulars in certain exempt offerings.

A copy of the offering circular, or similar document, if any, used in connection with an offering exempt from the offering circular requirement of § 563g.2 by reason of §§ 563g.3(e) or 563g.4 of this part shall be mailed to the Office within 30 days after the first sale of such securities. Such copy of the offering circular, or similar document, is solely for the information of the Office and shall not be deemed to be "filed" with the Office pursuant to § 563g.2 of this part. The mailing to the Office of such offering circular, or similar document, shall not be a precondition of the applicable exemption from the offering circular requirements of § 563g.2 of this part.

# § 563g.22 Delegation of authority.

The Chief Counsel, the Deputy Chief Counsel for Securities and Corporate Structure, and the Director of the Corporate and Securities Division, or their designee, is authorized to act on, or

exercise the Office's authority pursuant to, this part.

# PART 566-LIQUIDITY

Sec.

566.1 Definitions.

566.2 Requirements.

586.3 Deficiencies and penalties.

566.4 Reports; records, 566.5 Payment of penalty.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 6, 48 Stat. 134, as amended (12 U.S.C. 1465); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 701, as added by sec. 503, 88 Stat. 1521, as amended (15 U.S.C. 1691); sec. 702, as added by sec. 503, 88 Stat. 1521, as amended (15 U.S.C. 1691); sec. 702, as added by sec. 503, 88 Stat. 1522 (15 U.S.C. 1691a).

#### § 568.1 Definitions.

- (a) Cash. The term "cash" means cash on hand and unpledged demand accounts in a Federal Home Loan Bank, an insured bank, a savings association, the Bank for Savings and Loan Associations (Chicago, Illinois), or the Savings Banks Trust Company (New York, New York), but not gold in any form.
- (b) Insured financial institution. The term "insured financial institution" means a commercial or savings bank or savings association whose deposits are insured by the Federal Deposit Insurance Corporation and which is not under the control of any supervisory authority.

(c) Liquidity base. The term "liquidity base" means savings association's net withdrawable accounts plus the savings association's short-term borrowings.

(d) Net withdrawable accounts. The term "net withdrawable accounts" means all withdrawable accounts less the unpaid balance of all loans secured by such accounts, but not including tax and loan accounts, note accounts, accounts to the extent that security has been given upon them pursuant to any applicable regulations, U.S. Treasury General Accounts, or U.S. Treasury Time Deposit Open Accounts.

(e) Short-term borrowings. The term "short-term borrowings" means any portion of the principal amount thereof, payable on demand or in one year or less, but not including tax and loan accounts, note accounts, U.S. Treasury General Accounts, or U.S. Treasury Time Deposit Open Accounts.

(f) Obligations of the United States.
The term "obligations of the United States" means evidences of indebtedness issued by the United States, or issued by an agency or instrumentality thereof and fully

guaranteed as to principal and interest by the United States.

(g) Liquid assets. The term "liquid assets" means the total of cash, accrued interest on unpledged assets which qualify as liquid assets under this section or would so qualify except for their maturities, and the book value of the following unpledged assets (including such assets held subject to repurchase agreement), as long as principal and interest on such assets are not in default and a savings association's investments in such assets do not exceed any applicable limitations on such investments by the savings association:

(1) Time deposits in a Federal Home Loan Bank, the Bank for Savings and Loan Associations, Chicago, Illinois, or the Savings Banks Trust Company, New York, New York;

(2) Except as the Office may otherwise direct in a specific case, obligations of the United States

maturing in 5 years or less;

(3) Obligations with 5 years or less remaining until maturity, issued, or fully guaranteed as to principal and interest, by:

(i) A Federal Home Loan Bank(s):

(ii) The Federal National Mortgage Association;

(iii) The Government National Mortgage Association;

(iv) A Bank(s) for Cooperatives, including the National Bank for Cooperatives or the United Bank for Cooperatives:

(v) A Farm Credit Bank(s);

(vi) The Tennessee Valley Authority;(vii) The Export-Import Bank of the United States;

(viii) The Commodity Credit Corporation;

(ix) The Federal Financing Bank;

(x) The Student Loan Marketing Association:

(xi) The Federal Home Loan Mortgage Corporation; or

(xii) The National Credit Union Administration:

(4) Savings accounts of an insured financial institution, including loans of unsecured day(s) funds to an insured financial institution (i.e., Federal funds or similar unsecured loans), if:

(i) Except for loans of unsecured day(s) funds, such accounts are:

(A) Negotiable and will mature in one year or less,

(B) Not negotiable and will mature 90 days or less, or

(C) Not withdrawable without notice and the notice periods do not exceed 90 days;

(ii) Loans of unsecured day(s) funds will mature in 6 months or less; and (iii) The priority of claims of a lender of unsecured day(s) funds is not subordinate to claims of depositors in the borrower thereof;

(5) Bankers' acceptances of an insured

financial institution if:

(i) The total of all such acceptances of the same financial institution held by the same savings association does not exceed one-fourth of I percent of total deposits of such financial institution (as shown by its last published statement of condition preceding the date of acceptance);

(ii) Such acceptances will mature in 9

months or less;

(6) Obligations of or obligations issued by (other than gold-related obligations) any state, territory or possession of the United States or political subdivision thereof, including any agency, corporation or instrumentality of a state, territory, possession or political subdivision: Provided, That:

(i) Such obligations continue to meet the requirements of § 545.72(a) of this

chapter; and

(ii) Such obligations will mature in 2

years or less;

(7) Promissory notes issued to and made to the order of an insured financial institution by the Savings Association Insurance Fund or the Bank Insurance Fund;

(8) Shares or certificates in any openend management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments described in the other provisions of paragraphs (g)(1) through (g)(7), and (g)(9) of this section.

(9) Corporate debt obligations and commercial paper denominated in

dollars,

#### Provided, That:

(i) Such corporate debt obligations
(A) Continue to be rated in one of the four highest categories by the most recently published rating of such obligations by a nationally recognized

investment rating service,

(B) Are marketable as defined by § 541.7 of this part,

(C) Will mature in three years or less, and

(D) Are not convertible to common stock;

(ii) Such commercial paper

(A) Continues to be rated in one of the two highest categories by the most recently published rating of such paper by two nationally recognized investment rating services, or, if unrated, is guaranteed by a company having outstanding paper that is so rated,

(B) Will mature in 270 days or less;

and

Provided, That an amount not in excess of one percent of such institution's assets invested in eligible corporate debt obligations or commercial paper of a single issuer shall be counted as a

liquid asset; and (10) Reserves required to be maintained pursuant to Title I of the Depository Institutions Deregulation and Monetary Control Act of 1980 and established pursuant to 12 CFR part 204, whether in the form of (i) vault cash, (ii) balances maintained directly with the Federal Reserve Bank in the district in which the savings association is located, or (iii) a pass through account: Provided. That vault cash shall be included only once in calculating the aggregate amount of liquid assets. As used herein, the terms "vault cash" and "pass through account" are as defined in 12 CFR

(11) Any obligation that would qualify as a liquid asset under paragraph (g)(2), (g)(3), (g)(6) or (g)(9) of this section but for its maturity: Provided, That the

obligation:

204(2).

(i) Is hedged, at a value equal to or exceeding its book value, with a firm forward commitment (including a commitment represented by a repurchase agreement) to purchase the obligation issued by a member of the Association of Primary Dealers in United States Government Securities ("Association member"), an insured financial institution, as defined in paragraph (b) of this section, and the commitment must be fulfilled within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under paragraph (g) of this section;

(ii) Is hedged, at a value equal to or exceeding its book value, with a financial futures contract under which the obligation is of deliverable grade and the delivery date is at or before the maximum maturity necessary for the obligation (the deliverable security) to qualify as a liquid asset under paragraph (g) of this section;

(iii) Is hedged, at a value equal to or exceeding its book value, with a long put option and the time period within which the option may be exercised does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under paragraph (g)(11)(iii); or

(iv) Provides that the holder has the right to redeem the obligation with the issuer of the obligation at the stated or par value and that this right may be exercised within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a liquid asset under this paragraph (g)(11)(iv);

Provided further, That the amount of any obligation qualifying under paragraphs (g)(11)(i), (g)(11)(ii) or (g)(11)(iii) of this section that may be counted in satisfaction of the requirements imposed by § 586.2 of this part shall be the obligation's book value at the time of hedging; and Provided finally, That the board of directors of a savings association shall review on at least an annual basis the financial condition of each insured financial institution, and Association members from which it regularly obtains forward commitments.

(h) Short-term liquid assets. The term "short-term liquid assets" means the total of cash other than vault cash used to satisfy the reserve requirements of 12 CFR part 204, accrued interest on unpledged assets which qualify as liquid assets under paragraph (g) of this section, or would so qualify except for their maturities, and the book value of the following unpledged assets (including such assets held subject to repurchase agreement), as long as a savings association's investments in such assets do not exceed any applicable limitations on such investments by the savings association:

(1) Time deposits specified in paragraph (g)(1) of this section;

(2) Obligations specified in paragraphs (g) (2) and (3) of this section, which will mature in 12 months or less:

(3) Savings accounts, including loans of unsecured day(s) funds, that qualify as liquid assets under paragraph (g)(4) of this section, and, in the case of negotiable savings accounts, will mature in six months or less;

(4) Bankers' acceptances specified in paragraph (g)(5) of this section which will mature in 6 months or less;

(5) Obligations of or obligations (other than gold-related obligations) issued by a public housing agency which have the full faith and credit of the United States pledged under section 1421a(c) or section 1437i(a) of Title 42 of the U.S. Code, as amended, and which will mature in 6 months or less;

(6) Shares or certificates of any investment company qualifying under paragraph (g)(8) of this section, while the portfolio of such company is restricted by its investment policy, changeable only by vote of the shareholders, to investments described in paragraphs (h)(1) through (h)(5), and(h)(7) of this section; and

(7) Corporate debt obligations and commercial paper specified in paragraph (g)(9) of this section which will mature in six months or less.

(8) Any obligation that would qualify as a short-term liquid asset under paragraphs (h)(2), (h)(5) or (h)(7) of this paragraph (h)(8) but for its maturity: Provided. That the obligation:

(i) Is hedged, at a value equal to or exceeding its book value, with a firm forward commitment (including a commitment represented by a repurchase agreement to purchase the obligation issued by a member of the Association of Primary Dealers in United States Government Securities ("Association member"), an insured financial institution, as defined in paragraph (b) of this section, and the commitment must be fulfilled within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a short-term liquid asset under paragraph (h) of this section;

(ii) Is hedged, at a value equal to or exceeding its book value, with a financial futures contract under which the obligation is of deliverable grade and the delivery date is at or before the maximum maturity necessary for the obligation (the deliverable security) to qualify as a short-term liquid asset under paragraph (h) of this section;

(iii) Is hedged, at a value equal to or exceeding its book value, with a long put option and the time period within which the option may be exercised does not exceed the maximum maturity necessary for the obligation to qualify as a short-term liquid asset under paragraph (h) of this section; or

(iv) Provides that the holder has the right to redeem the obligation with the issuer of the obligation at the stated or par value and that this right may be exercised within a period of time that does not exceed the maximum maturity necessary for the obligation to qualify as a short-term liquid asset under paragraph (h) of this section;

Provided further, That the amount of any obligation qualifying under paragraphs (h)(8)(i), (h)(8)(ii) or (h)(8) (iii) of this section that may be counted in satisfaction of the requirements imposed by § 566.2 of this part shall be the obligation's book value at the time of hedging; and Provided finally, That the board of directors of a savings association shall review on at least an annual basis the financial condition of each insured financial institution and Association member from which it regularly obtains forward commitments.

#### § 566.2 Requirements.

(a) General. Except as otherwise provided in paragraphs (b) and (d) of this section, for each calendar month, each savings association, other than a mutual savings bank with an election under paragraph (e) of this section in effect, shall maintain an average daily balance of liquid assets not less than 5 percent of the average daily balance of its liquidity base during the preceding calendar month, and each savings association, other than a mutual savings bank, shall maintain an average daily balance of short-term liquid assets not less than I percent of the average daily balance of its liquidity base during the preceding calendar month.

(b) Exception. Instead of computing its liquidity requirement under paragraph (a) of this section, a savings association with less than \$25,000,000 in total assets at the beginning of its current fiscal year may, by resolution of its board of directors, compute such requirement as a percentage of its liquidity base as of the end of the preceding calendar month. Such election shall remain in effect so long as the savings association continues to meet the asset requirement, unless sooner revoked by resolution of its board of directors.

(c) Calculation of average daily balance. For purposes of this section, § 566.1, and § 566.3, the "average daily balance of liquid assets," "average daily balance of the savings association's liquidity base" shall be calculated by adding, respectively, the savings association's liquid assets, short-term liquid assets, or liquidity base, as of the close of each business day in a calendar month, and for any non-business day, as of the close of the nearest preceding business day, and dividing the respective total by the number of days in such month.

(d) Reduction and suspension of liquidity requirements. The Office may, to the extent and under conditions it may prescribe, permit a savings association to reduce its liquid assets below the minimum amount required by paragraph (a) of this section to meet withdrawals or pay obligations. The Office may suspend part or all of the liquidity requirements of paragraph (a) of this section whenever it determines that conditions of national emergency or unusual economic stress exist. Any such suspension, unless sooner terminated by its terms or by the Office, shall terminate after 90 days, but the Office may again suspend part or all of such requirement at any time.

(e) Election for mutual savings banks. Any mutual savings bank may maintain liquid assets in accordance with this

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paragraph (e) instead of the first sentence of paragraph (a) of this section. Any such mutual savings bank so electing shall maintain, for each calendar month, an average daily balance of liquid assets not less than 5 percent of its average daily liquidity base balance during the preceding calendar month, except as otherwise provided in paragraphs (b) and (d) of this section, and such savings association shall maintain commercial paper aggregating not less than the difference between:

(1) The amount of liquid assets which, but for such election, would have been required under the first sentence of paragraph (a) of this section and

(2) The actual amount of its liquid

### § 566.3 Deficiencies and penalties.

(a) Calculation of deficiency. (1)
Except as provided in paragraph (a)(2) of this section, a savings association's liquid assets or short-term liquid assets for any calendar month are deficient in the amount that the average daily balance of such assets for such calendar month is less than the respective minimum amount required under § 566.2.

(2) A savings association may reduce any deficiency under paragraph (a)(1) of this section as follows, *Provided*, That no such reduction may reduce a savings association's liquidity requirements below 4 percent of its liquidity base at the end of the immediately preceding month:

(i) Old rule. For the first month of a current distribution period, by the amount of its aggregate net withdrawals (excess of withdrawals over cash savings received) from withdrawable accounts during the last 3 business days of the immediately preceding month and the first 10 calendar days of the current month, and for the second month of the same distribution period, by one-half of such amount of aggregate net

(ii) New rule. For each month, by the amount of aggregate net withdrawals (excess of withdrawals over cash savings received) from withdrawable accounts during the month, and by one-half of the amount of the preceding month's aggregate net withdrawals not recovered.

withdrawals.

(iii) Effective dates. Reduction of any deficiency must be calculated under paragraph (a)(2)(i) of this section for all months through November 1979. For all months beginning with December 1979 through and including March 1980, reduction may be calculated under either paragraphs (a)(2)(i) or (a)(2)(ii) of this section. For all months beginning

April 1980, reduction shall be calculated under paragraph (a)(2)(ii) of this section.

(b) Calculation of penalty. A savings association shall calculate the penalty for any deficiency under paragraph (a) of this section by multiplying the amount of deficiency by 1/12 the sum of 2 percent and the annual interest rate for advances of 1 year or less charged by the Federal Home Loan Bank for the Federal Home Loan Bank district in which the principal office of the savings association is located on the last day of the month in which the deficiency occurred. The penalty for deficiencies in 1 month in both liquid assets and shortterm liquid assets shall be calculated only on the larger deficiency. No penalty shall be calculated on any deficiency of \$5,000 or less unless the Office so directs in a specific case.

(c) Assessment of penalty; compromise, remission, or reduction. Except as otherwise provided in this paragraph (c), penalties are hereby assessed when deficiencies arise. Upon application and subject to such conditions as may be imposed, the District Director or his/her designee may, before collection of a penalty, compromise, remit, or reduce it for good cause shown; e.g., that the penalty would cause a serious adverse effect on the savings association, or the deficiency resulted from:

 Unexpectedly heavy withdrawals or other situations beyond the control of an association's management, or

(2) Temporary disruption of normal operations because of a merger or similar transaction.

Applications which the District Director believes require Office consideration shall be forwarded to the Office for decision. Applications not approved by the District Director may be appealed by the applicant to the Office for final decision. No relief will be granted if the savings association has failed to observe any condition imposed in connection with prior relief from a liquidity deficiency penalty.

# § 566.4 Reports; records.

(a) Reports. By the 10th day of the month following assessment of a penalty under § 566.3(c) of this part, a savings association shall submit to the District Director a report regarding such penalty on forms obtained from the Office or the District Director.

(b) Records. Each savings association shall maintain records verifying its compliance with liquidity requirements prescribed by the Office, and make them available to the Office, or its representative, during supervisory examinations and at other times the Office may direct.

## § 586.5 Payment of penalty.

When a savings association submits a report required by § 566.4(a) of this part it shall enclose a check, payable to the Office, in the amount of the penalty for the month covered by the report, unless the savings association makes application under § 566.3(c) of this part.

## PART 567—CAPITAL

Sec

567.1 Definitions.

567.2 Minimum regulatory capital requirement.

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567.20 Grandfathered capital forbearances.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

#### § 567.1 Definitions.

For purposes of this part:

(a) Adjusted total assets. The term "adjusted total assets" means:

(1) A savings association's total assets as defined in § 567.1(ff);

(2) Plus

(i) For the risk-based capital standard, general valuation loan and lease loss allowances up to 1.5% of risk-weighted assets until December 30, 1992, and up to 1.25% of risk-weighted assets on or after December 31, 1992;

(ii) The prorated assets of any includable subsidiary in which the savings association has a minority ownership interest that is not consolidated under generally accepted accounting principles;

(iii) The prorated assets of any subsidiary acquired prior to April 12, 1989 that is not an includable subsidiary to the extent set forth in \$ 567.5(a)(2)(v)(C) or \$ 567.9(c)(3)(iii) respectively; and

(iv) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in paragraph (w)(1) of this section:

(3) Minus

(i) Assets not included in the applicable capital standard except for

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those subject to paragraphs (a)(3)(ii) and (a)(3)(iii) of this section;

(ii) Investments in any includable subsidiary in which a savings association has a minority interest;

(iii) Investments in any subsidiary subject to consolidation under paragraph (a)(2)(iii) of this section; and

(iv) For purposes of determining core capital, qualifying supervisory goodwill.

(b) Cash items in the process of collection. The term "cash items in the process of collection" means checks or drafts in the process of collection that are drawn on another depository institution, including a central bank, and that are payable immediately upon presentation; U.S. Government checks that are drawn on the United States Treasury or any other U.S. Government or Government-sponsored agency and that are payable immediately upon presentation; broker's security drafts and commodity or bill-of-lading drafts payable immediately upon presentation; and unposted debits

(c) Commitment. The term "commitment" means any arrangement that obligates a savings association to:

(1) Purchase loans or securities; or (2) Extend credit in the form of loans or leases, participations in loans or leases, overdraft facilities, revolving credit facilities, or similar transactions.

(d) Common stockholders' equity. The term "common stockholders' equity" means common stock, common stock surplus, retained earnings, adjustments for the cumulative effect of foreign currency translation and net unrealized losses on non-current marketable equity securities.

(e) Conditional guarantee. The term "conditional guarantee" means a contingent obligation of the United States Government or its agencies, the validity of which to the beneficiary is dependent upon some affirmative action—e.g., servicing requirements—on the part of the beneficiary of the guarantee or a third party.

(f) Direct credit substitutes. The term "direct credit substitutes" means any irrevocable obligation or portion thereof in which a savings association has essentially the same credit risk as if it had made a direct loan to the obligor or account party. It includes, but is not limited to, guarantees or guarantee type instruments backing financial claims such as outstanding securities, loans, and other financial obligations, and financial guarantee-type standby letters of credit.

(g) Depository institution. The term "domestic depository institution" means a financial institution that engages in the business of banking; that is recognized as a bank by the bank supervisory or

monetary authorities of the country of its incorporation and the country of its principal banking operations; that receives deposits to a substantial extent in the regular course of business; and that has the power to accept demand deposits. In the United States, this definition encompasses all federally insured offices of commercial banks, mutual and stock savings banks, savings or building and loan associations (stock and mutual), cooperative banks, credit unions, and international banking facilities of domestic depository institutions. Bank holding companies and savings and loan holding companies are excluded from this definition. For the purposes of assigning risk weights, the differentiation between OECD depository institutions and non-OECD depository institutions is based on the country of incorporation. Claims on branches and agencies of foreign banks located in the United States are to be categorized on the basis of the parent bank's country of incorporation.

(h) Eligible savings association. (1) The term "eligible savings association" means a savings association with respect to which the Director of the Office of Thrift Supervision has determined, on the basis of information available at the time, that:

(i) The savings association's management appears to be competent;

(ii) The savings association, as certified by its Board of Directors, is in substantial compliance with all applicable statutes, regulations, orders and written agreements and directives; and

(iii) The savings association's management, as certified by its Board of Directors, has not engaged in insider dealing, speculative practices, or any other activities that have or may jeopardize the association's safety and soundness or contributed to impairing the association's capital.

(2) Savings associations, for purposes of this paragraph, will be deemed to be eligible unless the Director makes a determination otherwise or notifies the savings association of its intent to conduct either an informal or formal examination to determine eligibility and provides written notification thereof to the savings association.

(i) Equity investments. (1) The term "equity investments" includes investments in equity securities and real property that would be considered an equity investment under generally accepted accounting principles.

(2) The term "equity securities" means any

(i) Stock, certificate of interest of participation in any profit-sharing agreement, collateral trust certificate or subscription, preorganization certificate or subscription, transferable share, investment contract, or voting trust certificate; or

(ii) In general, any interest or instrument commonly known as an equity security; or

(iii) Loans having profit sharing features which generally accepted accounting principles would reclassify as equity securities; or

(iv) Any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; or

 (v) Any security carrying any warrant or right to subscribe to or purchase such a security; or

(vi) Any certificate of interest or participation in, temporary or Interim certificate for, or receipt for any of the foregoing or any partnership interest; or

(vii) Investments in equity securities and loans or advances to and guarantees issued on behalf of partnerships or joint ventures in which a savings association holds an interest in real property under generally accepted accounting principles.

It does not include investments in subsidiaries as defined in paragraph (dd) of this section or service corporations or stock of Federal Home Loan Banks or Federal Reserve Banks.

(3) For purposes of this part, the term "equity investments in real property" does not include interests in real property that are primarily used or intended to be used by the savings association, its subsidiaries, or its affiliates as offices or related facilities for the conduct of its business.

(4) In addition, for purposes of this Part, the term "equity investments in real property" does not include interests in real property that are acquired in satisfaction of a debt previously contracted in good faith or acquired in sales under judgments, decrees, or mortgages held by the savings association, provided that the property is not intended to be held for real estate investment purposes but is expected to be disposed of within five years or a longer period approved by the Office.

(j) Exchange rate contracts. The term "exchange rate contracts" includes cross-currency interest rate swaps; forward foreign exchange rate contracts; currency options purchased; and any similar instrument that, in the opinion of the Office, may give rise to similar risks.

(k) High quality mortgage-related securities. The term "high quality mortgage-related securities" means any mortgage-related security as defined in section 3(c)(41) of the Securities

Exchange Act of 1934, 15 U.S.C. 78(c)(41), and any mortgage-backed securities issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. It includes mortgagebacked bonds meeting equivalent rating requirements.

(1) Includable subsidiary. The term "includable subsidiary" means a subsidiary of a savings association that

(1) Engaged solely (either directly or through ownership of a subsidiary) in activities not impermissible for a national bank;

(2) Engaged in activities not permissible for a national bank, but only if acting solely as agent for its customers and such agency position is clearly documented in the savings association's files;

(3) Engaged solely in mortgage-

banking activities;

(4)(i) Itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

(ii) Was acquired by the parent savings association prior to May 1, 1989;

(5) A subsidiary of any Federal savings association existing as a Federal savings association on August 9, 1989

(i) Was chartered prior to October 15, 1982, as a savings bank or a cooperative

bank under State law, or

(ii) Acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law.

(m) Intangible assets. The term "intangible assets" includes, but is not limited to, credit card servicing rights, goodwill, favorable leaseholds, core deposit value, and purchased mortgage

servicing rights.

(n) Interest-rate contracts. The term "interest-rate contracts" includes single currency interest-rate swaps; basis swaps; forward rate agreements; interest-rate options purchased; forward forward deposits accepted; and any other instrument that, in the opinion of the Office, may give rise to similar risks, including when-issued securities.

(o) Mortgage-related securities. The term "mortgage-related securities means any mortgage-related qualifying security under section 3(c)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(41), provided that, the rating requirements of that section shall not be considered for purposes of this

definition. (p) OECD-based country. The term "OECD-based country" means a

member of the grouping of countries that are full members of the Organization of Economic Cooperation and Development, plus countries that have concluded special lending arrangements with the International Monetary Fund ("IMF") associated with the IMF's capital General Arrangements to Borrow. These countries are hereinafter referred to as "OECD countries". "Public-sector entities" include states, local authorities, and governmental subdivisions below the central government level in any OECD-country. "Central government" means the national governing authority of a country; it includes the departments, ministries and agencies of the central government. This definition does not include the following: State, provincial, or local governments; commercial enterprises owned by the central government, which are entities engaged in activities involving trade, commerce, or profit that are generally conducted or performed in the private sector of the United States economy; and non-central government entities whose obligations are guaranteed by the central government.

(q) Original maturity. The term "original maturity" means, with respect to a commitment, the earliest possible date after a commitment is made on which it expires or is unconditionally cancelable at the option of the issuing

savings association.

(r) Perpetual preferred stock. The term "perpetual preferred stock" means preferred stock without a fixed maturity date that cannot be redeemed at the option of the holder, and that has no other provisions that will require future redemption of the issue. For purposes of these instruments, preferred stock that can be redeemed at the option of the holder is deemed to have an "original maturity" of the earliest possible date on which it may be so redeemed. Cumulative perpetual preferred stock is preferred stock where the dividends accumulate from one period to the next. Noncumulative perpetual preferred stock is preferred stock where the unpaid dividends are not carried over to subsequent dividend periods.

(s) Problem institution. The term "problem institution" means a savings association that, at the time of its acquisition, merger, purchase of assets or other business combination with or by another savings association:

(1) Was subject to special regulatory controls by its primary Federal or state

regulatory authority;

(2) Posed particular supervisory concerns to its primary Federal or state regulatory authority; or

- (3) Failed to meet its regulatory capital requirement immediately before the transaction.
- (t) Prorated assets. The term "prorated assets" means the total assets (as determined in the most recently available GAAP report but in no event more than one year old) of a subsidiary (including those subsidiaries where the savings association has a minority interest) multiplied by the savings association's percentage of ownership of that subsidiary.
- (u) Qualifying mortgage loan. The term "qualifying mortgage loan" means a permanent 1-4 family residential first mortgage loan that is prudently underwritten and is performing and not more than 90 days past due with a documented loan-to-value ratio not exceeding 80 percent (at origination) unless insured to at least an 80 percent loan-to-value ratio by private mortgage insurance provided by an issuer approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.
- (v) Qualifying multifamily mortgage loan. The term "qualifying multifamily mortgage loan" means a loan on an existing property consisting of 5-36 dwelling units with an initial loan-tovalue ratio of not more than 80% where an average annual occupancy rate of 80% or more of total units has existed for at least one year.
- (w) Qualifying supervisory goodwill. The term "qualifying supervisory goodwill" means, for eligible savings associations:
- (1) Any unamortized goodwill (FSLIC Capital Contributions, as reported in the September 30, 1989 Thrift Financial Report) that existed on April 12, 1989 resulting from prior regulatory accounting practices less any amortization that would have occurred subsequent to April 12, 1989 through the current reporting period where the amortization is calculated on a straight line basis over the shorter of 20 years, or the remaining period for amortization in effect on April 12, 1989 for regulatory accounting practices; plus

(2) The lesser of:

- (i) Supervisory goodwill as defined in 567.1(ee) that is included in goodwill that is reflected in the current reporting period under generally accepted accounting principles ("GAAP"); or
- (ii)(A) Supervisory goodwill as defined in 567.1(ee) that is included in goodwill that is reflected in the current reporting period under GAAP:
- (B) Plus any amortization of the goodwill in paragraph (w)(2)(ii)(A) of this section that occurred subsequent to

April 12, 1989 for GAAP reporting

purposes;

(C) Minus the amortization of the goodwill in paragraph (w)(2)(ii)(A) of this section through the current reporting period that results when the goodwill is amortized subsequent to April 12, 1989 on a straightline basis over the shorter of 20 years, or the remaining period for amortization in effect on April 12, 1989 for GAAP reporting purposes.

(x) Reciprocal holdings of depository institution instruments. The term "reciprocal holdings of depository institution instruments" means crossholdings or other formal or informal arrangements in which two or more depository institutions swap, exchange, or otherwise agree to hold each other's capital instruments. This definition does not include holdings of capital instruments issued by other depository institutions that were taken in satisfaction of debts previously contracted, provided that the reporting savings association has not held such instruments for more than five years or a longer period approved by the Office.

(y) Replacement cost. The term "replacement cost" means, with respect to interest rate and exchange-rate contracts, the loss that would be incurred in the event of a counterparty default, as measured by the net cost of replacing the contract at the current market value. If default would result in a theoretical profit, the replacement value is considered to be zero. This mark-tomarket process must incorporate changes in both interest rates and counterparty credit quality.

(z) Residential properties. The term "residential properties" means houses, condominiums, cooperative units, and manufactured homes. This definition does not include boats or motor homes, even if used as a primary residence, or

timeshare properties.

(aa) Residual characteristics. The term "residual characteristics" means interests similar to a multi-class paythrough obligation representing the excess cash flow generated from mortgage collateral over the amount required for the issue's debt service and ongoing administrative expenses or interests presenting similar degrees of interest-rate/prepayment risk and principal loss risks.

(bb) Risk-weighted assets. The term "risk-weighted assets" means the sum total of risk-weighted on-balance sheet assets and the total of risk-weighted offbalance sheet credit equivalent amounts. These assets are calculated in accordance with section 567.8 of this

part.

(cc) State. The term "State" means any one of the several states of the

United States of America, the District of Columbia, Puerto Rico, and the territories and possessions of the United

(dd) Subsidiary. The term "subsidiary" means any corporation, partnership, business trust, joint venture, association, pool, syndicate or other similar organization, in which a savings association has a 5% or greater ownership interest,1 regardless of whether the savings association exercises, directly or indirectly, control as determined under generally accepted accounting principles. This definition does not include ownership interests that were taken in satisfaction of debts previously contracted, provided that the reporting savings association has not held the interest for more than five years or a longer period approved by the

(ee) Supervisory goodwill. The term "supervisory goodwill" means goodwill resulting from the acquisition, merger, consolidation, purchase of assets, or other business combination (if such transaction occurred on or before April 12, 1989) of

(1) A savings association where the fair market value of assets was less than the fair market value of liabilities at the acquisition date; or

(2) A problem institution.

(ff) Total assets. The term "total assets" means total assets as would be required to be reported for consolidated entities on period-end reports filed with the Office in accordance with generally accepted accounting principles.

(gg) Unconditionally cancelable. The term "unconditionally cancelable" means, with respect to a commitmenttype lending arrangement, including retail credit card lines, that a savings association may, at any time, with or without cause, refuse to advance funds or extend credit under the facility.

(hh) United States Government or its agencies. The term "United States Government or its agencies" means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government.

(ii) United States Governmentsponsored agency or corporation. The term "United States Governmentsponsored agency or corporation"

means an agency or corporation originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

#### § 567.2 Minimum regulatory capital requirement.

- (a) To meet its regulatory capital requirement a savings association must satisfy each of the following capital standards:
- (1) Risk-based capital requirement. (i) A savings association's minimum riskbased capital requirement shall be an amount equal to 6% of its risk-weighted assets as measured pursuant to § 567.8 of this part plus 2% of its risk-weighted assets as measured pursuant to that
- (ii) A savings association may not use supplementary capital to satisfy this requirement in an amount greater than 100% of its core capital as defined in § 567.5 of this part.

(2) Leverage ratio requirement. (i) A savings association's minimum leverage ratio requirement shall be the amount set forth in § 567.8 of this part.

(ii) A savings association must satisfy this requirement with core capital as defined in § 567.5 of this part in an amount not less than 3% of its adjusted total assets.

(3) Tangible capital requirement. (i) A savings association's minimum tangible capital requirement shall be the amount set forth in § 567.9 of this part.

(ii) A savings association must satisfy this requirement with tangible capital as defined in § 567.9 of this part in an amount not less than 1.5% of its adjusted total assets.

(b) Transition period for risk-based capital requirement. (1) From December 7, 1989 to December 30, 1990, a savings association's minimum risk-based capital requirement for any calendar quarter shall be an amount equal to 80% of the amount required under paragraph (a)(1) of this section; and

(2) From December 31, 1990 until December 31, 1992, a savings association's minimum risk-based capital requirement for any calendar quarter shall be an amount equal to 90% of the amount required under paragraph (a)(1) of this section.

(c) Savings associations are expected to maintain compliance with all of these standards at all times.

#### § 567.3 Individual minimum capital requirements.

(a) Purpose and scope. (1) The rules and procedures specified in this section

<sup>&</sup>lt;sup>1</sup> The Office reserves the right to review a savings association's investment in a subsidiary on a case by-case basis. If the Office determines that such investment is more appropriately treated as an equity security or an ownership interest in a subsidiary it will make such determination regardless of the percentage of ownership held by the savings association.

apply to the establishment of an individual minimum capital requirement for a savings association that varies from the requirement that would otherwise apply to the savings association under § 567.2. Pursuant to 12 U.S.C. 1464(s), the Office delegates authority to the District Directors to establish, with the prior written concurrence of the Senior Deputy Director for Supervision (Operations) such individual minimum capital requirements for savings associations as are necessary or appropriate on a caseby-case basis in light of the particular circumstances of each savings association. Under the Office's oversight, the Senior Deputy Director for Supervision (Policy) shall establish guidelines for the exercise by the District Directors of the authority granted by this section to set individual minimum capital requirements in a fair, uniform manner consistent with the Office's national policies.

(2) Upon adoption and satisfactory implementation of such guidelines under the oversight of the Office, the Office may delegate, in all or in part, exclusively to the District Directors the authority to set individual minimum capital requirements in conformance with the guidelines without the requirement for case-by-case concurrence by the Senior Deputy Director for Supervision (Operations) and the Office subsequently may terminate such delegation. Under such delegation, a District Director's decision would constitute final agency action. After such delegation, the Senior Deputy Director for Supervision (Policy) under the Office's oversight would retain control over the guidelines for District Director action and would oversee implementation of and compliance with the guidelines. The Senior Deputy Director for Supervision (Operations) would continue to be notified of individual minimum capital requirements set by the District

(b) Appropriate considerations for establishing individual minimum capital requirements. Minimum capital levels higher than those required under § 567.2 may be appropriate for individual savings associations. Increased individual minimum capital requirements may be established upon a determination that the savings association's capital is or may become inadequate in view of its circumstances. For example, higher capital levels may be appropriate for:

 A savings association receiving special supervisory attention; (2) A savings association that has or is expected to have losses resulting in capital inadequacy;

(3) A savings association that has a high degree of exposure to interest-rate risk, prepayment risk, credit risk, or similar risks; or a high proportion of offbalance sheet risk, especially standby letters of credit;

(4) A savings association that has poor liquidity or cash flow;

(5) A savings association growing, either internally or through acquisitions, at such a rate that supervisory problems are presented that are not dealt with adequately by § 563.131 of this subchapter or other Office regulations;

(6) A savings association that may be adversely affected by the activities or condition of its holding company, affiliate(s), subsidiaries, or other persons or savings associations with which it has significant business relationships, including concentrations of credit;

(7) A savings association with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or that has loans in nonperforming status or on which borrowers fail to comply with repayment terms;

(3) A savings association that has inadequate underwriting policies, standards, or procedures for its loans and investments; or

(9) A savings association that has a record of operational losses that exceeds the average of other, similarly situated, savings associations; has management deficiencies; or has a poor record of supervisory compliance.

(c) Standards for determination of appropriate individual minimum capital requirements. The appropriate minimum capital level for an individual savings association cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based, in part, on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

 The conditions or circumstances leading to the determination that a higher minimum capital requirement is appropriate or necessary for the savings association;

(2) The exigency of those circumstances or potential problems;

(3) The overall condition, management strength, and future prospects of the savings association and, if applicable, its holding company, subsidiaries, and affiliates;

(4) The savings association's liquidity, capital and other indicators of financial stability, particularly as compared with those of similarly situated savings associations; and

(5) The policies and practices of the savings association's directors, officers, and senior management as well as the internal control and internal audit systems for implementation of such adopted policies and practices.

(d) Procedures—(1) Notification. When a District Director determines that a minimum capital requirement different from that set forth in § 567.2 is necessary or appropriate for a particular savings association and is in accordance with any guidelines, the District Director shall notify the savings association in writing of its proposed individual minimum capital requirement; the schedule for compliance with the new requirement; and the specific causes for determining that the higher individual minimum capital requirement is necessary or appropriate for the savings association. At the same time, the District Director shall forward to the Senior Deputy Director for Supervision (Operations) a copy of the notifying letter, along with the documentation supporting the need for such a higher capital requirement. The District Director shall also forward the notifying letter to the appropriate state supervisor if a state-chartered savings association would be subject to an individual minimum capital requirement.

(2) Response. (i) The response shall include any information that the savings association wants the District Director to consider in deciding whether to establish or to amend an individual minimum capital requirement for the savings association, what the individual capital requirement should be, and, if applicable, what compliance schedule is appropriate for achieving the required capital level. The responses of the savings association and appropriate state supervisor must be in writing and must be delivered to the District Director within 30 days after the date on which the notification was received. The District Director shall then forward a copy of these responses to the Senior Deputy Director for Supervision (Operations). The District Director may extend the time period for good cause. The time period for response by the savings association may be shortened for good cause:

(A) When, in the opinion of the District Director, the condition of the savings association so requires, and the District Director informs the savings association of the shortened response period in the notice;

(B) With the consent of the savings association; or

(C) When the savings association already has advised the District Director that it cannot or will not achieve its applicable minimum capital

requirement.

(ii) Failure to respond within 30 days, or such other time period as may be specified by the District Director, may constitute a waiver of any objections to the proposed individual minimum capital requirement or to the schedule for complying with it, unless the District Director has provided an extension of the response period for good cause.

- (3) Decision. After expiration of the response period, the District Director shall decide whether or not he believes the proposed individual minimum capital requirement should be established for the savings association, or whether that proposed requirement should be adopted in modified form, based on a review of the savings association's response and other relevant information. The District Director's decision shall address comments received within the response period from the savings association and the appropriate state supervisor (if a state-chartered savings association is involved) and shall state the level of capital required, the schedule for compliance with this requirement, and any specific remedial action the savings association could take to eliminate the need for continued applicability of the individual minimum capital requirement. The District Director shall send a copy of the recommended final determination to the Senior Deputy Director for Supervision (Operations) which must concur before the decision becomes effective and is communicated to the savings association and to the appropriate state supervisor (if a statechartered savings association is involved). The District Director shall provide the savings association with a written decision on the individual minimum capital requirement, addressing the substantive comments made by the savings association and setting forth the decision and the basis for that decision. Upon receipt of this decision, the individual minimum capital requirement becomes effective and binding upon the savings association. This decision represents final agency
- (4) Failure to comply. Failure to satisfy an individual minimum capital requirement, or to meet any required incremental additions to capital under a schedule for compliance with such an individual minimum capital requirement, shall constitute a legal basis for issuing a capital directive pursuant to § 567.4 of this part.

(5) Change in circumstances. If, after a decision is made under paragraph (d)(3) of this section, there is a change in the circumstances affecting the savings association's capital adequacy or its ability to reach its required minimum capital level by the specified date, the District Director may, with the concurrence of the Senior Deputy Director for Supervision (Operations), amend the individual minimum capital requirement or the savings association's schedule for such compliance. As set forth in paragraph (a)(1) of this section with regard to the initial setting of an individual capital requirement, this authority may also be delegated exclusively to the District Directors without the need for the concurrence of the Senior Deputy Director for Supervision (Operations) in individual determinations. The District Director may decline to consider a savings association's request for such changes that are not based on a significant change in circumstances or that are repetitive or frivolous. The District Director shall notify the Senior Deputy Director for Supervision (Operations) of the request and his decision. Pending the District Director's reexamination of the original decision, that original decision and any compliance schedule established thereunder shall continue in full force and effect.

#### § 567.4 Capital directives.

(a) Issuance of a Capital Directive-(1) Purpose. In addition to any other action authorized by law, the Office, after referral of an appropriate case by a District Director and based on a recommendation of the Office's Office of Enforcement developed in coordination with the Senior Deputy Director for Supervision (Operations) may issue a capital directive to a savings association that does not have an amount of capital satisfying its minimum capital requirement. Issuance of such a capital directive may be based on a savings association's noncompliance with a capital requirement established under § 567.2, § 567.3, by a written agreement under 12 U.S.C. 1464(d)(2), or as a condition for approval of an application. A capital directive may order a savings association to:

 (i) Achieve its minimum capital requirement by a specified date;

 (ii) Adhere to the compliance schedule for achieving its individual minimum capital requirement;

(iii) Submit and adhere to a capital plan acceptable to the Office describing the means and a time schedule by which the savings association shall reach its required capital level;

- (iv) Take other action, including but not limited to, reducing the savings association's assets or its rate of liability growth, or imposing restrictions on the savings association's payment of dividends, in order to cause the savings association to reach its required capital level:
- (v) Take any action authorized under § 567.10(e); or

(vi) Take a combination of any of these actions.

A capital directive issued under this section, including a plan submitted pursuant to a capital directive, is enforceable under 12 U.S.C. 1464(d)(8) in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final

under 12 U.S.C. 1464(d)(2).

(2) Notice of intent to issue capital directive. Upon referral of a case by a District Director, the Office of Enforcement, in coordination with the Senior Deputy Director for Supervision (Operations), will determine whether to initiate the process of issuing a capital directive. The Office of Enforcement will notify a savings association in writing by registered mail of its intention to issue a capital directive. If a statechartered savings association is involved, the Office of Enforcement will also notify and solicit comment from the appropriate state supervisor. The notice will state:

(i) The reasons for issuance of the capital directive and

(ii) The proposed contents of the capital directive.

(3) Response to notice of intent. (i) A savings association may respond to the notice of intent by submitting its own compliance plan, or may propose an alternative plan. The response should also include any information that the savings association wishes the Office of Enforcement to consider and the Senior Deputy Director for Supervision (Operations) to review in deciding whether to recommend that the Office issue a capital directive. The appropriate state supervisor may also submit a response to the Office of Enforcement. These responses must be in writing and be delivered to the Office of Enforcement within 30 days after receipt of the notices. In its discretion, the Office of Enforcement may extend the time period for the response for good cause. The Office of Enforcement may, for good cause, shorten the 30-day time period for response by the savings association:

(A) When, in the opinion of the Office of Enforcement, the condition of the savings association so requires, and the Office of Enforcement informs the

savings association of the shortened response period in the notice;

(B) With the consent of the savings association; or

(C) When the savings association already has advised the Office of Enforcement that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days of receipt, or such other time period as may be specified by the Office of Enforcement, may constitute a waiver of any objections to the capital directive unless the Office of Enforcement grants an extension of the time period for good cause.

(4) Decision. After the closing date of the savings association's response period, or upon receipt of the savings association's response, if earlier, the Office of Enforcement shall consider the savings association's response and may seek additional information or clarification of the response. Thereafter, the Office, based on a recommendation from the Office of Enforcement developed in coordination with the Senior Deputy Director for Supervision (Operations), will determine whether or not to issue a capital directive and, if one is to be issued, whether it should be as originally proposed or in modified

(5) Service and effectiveness. (i) Upon issuance, a capital directive will be served upon the savings association. It will include or be accompanied by a statement of reasons for its issuance and shall address the responses received during the response period.

(ii) A capital directive shall become effective upon the expiration of 30 days after service upon the savings association, unless the Office of Enforcement determines that a shorter effective period is necessary either on account of the public interest or in order to achieve the capital directive's purpose. If the savings association has consented to issuance of the capital directive, it may become effective immediately. A capital directive shall remain in effect and enforceable unless, and then only to the extent that, it is stayed, modified, or terminated by the Office.

(6) Change in circumstances. Upon a change in circumstances, a savings association may submit a request to its District Director to reconsider the terms of the capital directive or consider changes in the savings association's capital plan issued under a directive for the savings association to achieve its minimum capital requirement. If the District Director believes such a change is warranted, the District Director shall forward the request to the Office of

Enforcement, which may recommend that the Office modify the savings association's capital requirement or may refuse to recommend such action if it determines that there are not significant changes in circumstances. Pending a decision on reconsideration, the capital directive and capital plan shall continue in full force and effect.

(b) Relation to other administrative actions. The Office—

(1) May consider a savings association's progress in adhering to any capital plan required under this section whenever such savings association or any affiliate of such savings association (including any company which controls such savings association) seeks approval for any proposal that would have the effect of diverting earnings, diminishing capital, or otherwise impeding such savings association's progress in meeting its minimum capital requirement (such as an application under § 563.131 of this subchapter, or an application for approval to exceed its applicable equity risk investment threshold pursuant to § 563.98(g) of this subchapter); and

(2) May disapprove any proposal referred to in paragraph (b)(1) of this section if the Office determines that the proposal would adversely affect the ability of the savings association on a current or proforma basis to satisfy its

capital requirement.

## § 567.5 Components of capital.

(a) Core Capital.

(1) The following elements, less the amount of any deductions pursuant to paragraph (a)(2) of this section, comprise a savings association's core capital:

(i) Common stockholders' equity (including retained earnings);

(ii) Noncumulative perpetual preferred stock and related surplus.<sup>2</sup>

(iii) Minority interests in the equity accounts of subsidiaries that are fully consolidated;

(iv) Nonwithdrawable accounts and pledged deposits of mutual savings associations (excluding any treasury shares held by the savings association) meeting the criteria of regulations and

(2) Deductions from core capital:

(i) Intangible assets are deducted from assets for purposes of determining core capital except as provided elsewhere in this paragraph.

(ii) Assets that meet the definition of intangible assets as set forth at § 567.1(m) of this part (excluding purchased mortgage servicing rights), but meet the following three-part test shall not be considered intangible assets for purposes of this section but are limited to 25% of core capital:

(A) The intangible asset must be able to be separated and sold apart from the savings association or from the bulk of the savings association's assets;

(B) The market value of the intangible asset must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the savings association; and

(C) The savings association must demonstrate and document that a market exists which will provide liquidity for the intangible asset.

(iii) Paragraph (a)(2)(i) of this section does not apply to the following intangible assets:

(A) Purchased mortgage servicing rights. These must be valued at the lower of 90% of fair market value to the extent determinable, 90% of original cost or the current amortized book value as determined under generally accepted accounting principles. The amount written off, if any, is deducted from assets and, therefore, core capital.

(B) Qualifying supervisory goodwill held by an eligible savings association (as defined in § 567.1(h) of this part) to the extent permitted by this paragraph. The amount of qualifying supervisory goodwill may not exceed the applicable percentage of adjusted total assets as calculated for the tangible capital requirement set forth in the following table:

7 100000 00	
2 Prefer	red stock issues where the dividend is
reset neri	odically based upon current market
and the	outcarry based upon current market
condition	s and the savings association's current
credit rat	ing, including but not limited to, auction
rate, mon	ey market or remarketable preferred stock.
ore evele	of interior remarkerable preferred stock.
are assign	ned to supplementary capital, regardless of
its cumula	ative or noncumulative characteristics.
Preferred	stock issued by subsidiaries that may not
he country	d by the person and all the may not
TO COUNTE	d by the parent savings association on the
I hritt Fin	ancial Report, likewise may not be
considere	d in calculating capital. Preferred stock
issued by	a savings association or a subsidiary that
issued by	a savings association or a subsidiary that
18, in enec	ct, collateralized by assets of the savings
associatio	on or one of its subsidiaries may not be
included i	n canital
ALTOI GLOUD I	a sapitali

	Percent
Prior to January 1, 1992	1.500 1.000 0.750

memoranda of the Office to the extent that such accounts or deposits have no fixed maturity date, cannot be withdrawn at the option of the accountholder, and do not earn interest that carries over to subsequent periods.

(v) The remaining goodwill (FSLIC Capital Contributions) resulting from prior regulatory accounting practices as provided in § 567.1(w)(1) of this part.

The state of the same of	Percent
January 1, 1994-December 31, 1994	0.375

(iv) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the savings association has a minority ownership interest) are deducted from assets and, thus core capital except as provided in paragraphs (a)(v) and (a)(vi) of this section.

(v)(A) For investments described in paragraph (a)(iv) of this section where the subsidiary was engaged before April 12, 1989 in activities that would not fall within the scope of activities in which includable subsidiaries may engage, a savings association must deduct from assets and, thus, capital the applicable percentage set forth in paragraph (a)(2)(v)(B) of this section of the lesser of:

(1) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(2) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(B) For purposes of paragraph (a)(2)(v)(A) of this section, the applicable percentage is as follows:

For the period:	The applicable percentage is:
Prior to July 1, 1990	0
July 1, 1990-June 30, 1991	. 10
July 1, 1991-June 30, 1992	25
July 1, 1992-June 30, 1993	40
July 1, 1993-June 30, 1994	60
Thereafter	100

(C) A savings association that has deducted a portion of its investment in a subsidiary pursuant to paragraph (a)(2)(v)(A) of this section must consolidate the prorated assets of the subsidiary in calculating adjusted total assets for the core capital requirement by multiplying those prorated assets by the following applicable percentage and adding that amount in calculating its adjusted total assets:

For the period:	The applicable percentage is:
Prior to July 1, 1990	90

For the period:	The applicable percentage is:
July 1, 1992–June 30, 1993	60
Thereafter	0

(vi) If a savings association holds a subsidi.ary (either directly or through a subsidiary) that is itself a domestic depository institution, the Office may, in its sole discretion upon determining that the amount of core capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent savings association than the amount that would be required if the parent savings association's investment were deducted pursuant to paragraphs (a)(2)(iv) and (a)(2)(v) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent savings association in calculating the capital adequacy of the parent savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in § 567.1(1) of this part.

(b) Supplementary Capital.
Supplementary capital counts towards a savings association's total capital up to a maximum of 100% of the savings association's core capital. The following elements comprise a savings association's supplementary capital:

(1) Permanent Capital Instruments. (i) Cumulative perpetual preferred stock and other perpetual preferred stock sissued pursuant to regulations and memoranda of the Office;

(ii) Mutual capital certificates issued pursuant to regulations and memoranda of the Office;

(iii) Nonwithdrawable accounts and pledged deposits (excluding any treasury shares held by the savings association) meeting the criteria of 12 CFR 561.42 to the extent that such instruments are not included in core capital under paragraph (a) of this section:

(iv) Net worth certificates either issued pursuant to regulations and memoranda of the Office, or that the FDIC is committed to purchase;

(v) Income capital certificates;

(vi) Perpetual subordinated debt issued pursuant to regulations and memoranda of the Office; and

(vii) Mandatory convertible subordinated debt (capital notes) issued pursuant to regulations and memoranda of the Office.

(2) Maturing Capital Instruments. (i) Subordinated debt issued pursuant to regulations and memoranda of the Office:

(ii) Intermediate-term preferred stock issued pursuant to regulations and memoranda of the Office and any related surplus:

(iii) Mandatory convertible subordinated debt (commitment notes) issued pursuant to regulations and memoranda of the Office; and

(iv) Mandatorily redeemable preferred stock that was issued before July 23, 1985 or issued pursuant to regulations and memoranda of the Office and approved in writing by the FSLIC for inclusion as regulatory capital before or after issuance.

(3) Transition rules for maturing capital instruments.—(i) Maturing capital instruments issued on or before November 7, 1989. For all maturing capital instruments issued on or before November 7, 1989, the following amortization schedule applies:

Years to maturity of outstanding subordinated debt	Percent included in supple- mentary capital
Greater than or equal to 7	100
Less than 7 but greater than or equal to	86
Less than 6 but greater than or equal to	71
Less than 5 but greater than or equal to	57
Less than 4 but greater than or equal to	43
Less than 3 but greater than or equal to	29
Less than 2 but greater than or equal to	14
Less than 1	0

(ii) Maturing capital instruments issued after November 7, 1989. A savings association issuing maturing capital instruments after November 7, 1989, may choose, subject to paragraph (b)(3)(ii)(C) of this section, to include such instruments pursuant to either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section.

(A) At the beginning of each of the last five years of the life of the maturing capital instrument, the amount that is eligible to be included as supplementary capital is reduced by 20% of the original

<sup>\*</sup> Preferred stock issued by subsidiaries that may not be counted by the parent savings association on the Thrift Financial Report likewise may not be considered in calculating capital. Preferred stock issued by a savings association or a subsidiary that is, in effect, collateralized by assets of the savings association or one of its subsidiaries may not be included in capital.

amount of that instrument (net of redemptions).4

(B) Only the aggregate amount of maturing capital instruments that mature in any one year during the seven years immediately prior to an instrument's maturity that does not exceed 20% of an institution's capital will qualify as supplementary capital.

(C) Once a savings association selects either paragraph (b)(3)(ii)(A) or (b)(3)(ii)(B) of this section for the issuance of a maturing capital instrument, it must continue to elect that option for all subsequent issuances of maturing capital instruments for as long as there is a balance outstanding of such post-November 7, 1989 issuances. Only when such issuances have all been repaid and the savings association has no balance of such issuances outstanding may the savings association elect the other option.

(4) General valuation loan and lease loss allowances. General valuation loan and lease loss allowances established pursuant to regulations and memoranda of the Office up to a maximum of 1.25 percent of risk-weighted assets. Until December 31, 1992, such allowances may not constitute any more than 1.5% of risk-weighted assets. Thereafter they may not constitute any more than 1.25%

of risk-weighted assets.

(c) Total Capital. (1) A savings association's total capital equals the sum of its core capital and supplementary capital (to the extent that such supplementary capital does not exceed 100% of its core capital).

(2) The following assets, in addition to assets required to be deducted elsewhere in calculating core capital, are deducted from assets for purposes of determining total capital, subject to paragraph (c)(3) of this section.

 (i) Reciprocal holdings of depository institution capital instruments;

(ii) All equity investments, except as provided in paragraph (c)(3) of this section; and

(iii ) That portion of land loans and conresidential construction loans in excess of 80 percent loan-to-value ratio. (3) The following percentages of investments described in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section may be included in the calculation of adjusted total assets and, thus, total capital for the periods indicated:

	Percent
Prior to July 1, 1990	100
July 1, 1990-June 30, 1991	90
July 1, 1991-June 30, 1992	75
July 1, 1992-June 30, 1993	60
July 1, 1993-June 30, 1994	40
Thereafter	0

# § 567.6 Risk-based capital credit risk weight categories.

(a) Risk-weighted Assets. Riskweighted assets equal total assets plus consolidated off-balance sheet items where each asset or item is multiplied by the appropriate risk weight as set forth in this section. Before an offbalance sheet item can be assigned a risk weight, it must be converted to an on-balance sheet credit equivalent amount in accordance with this section. The risk weight assigned to a particular asset or on-balance sheet credit equivalent amount determines the percentage of that asset/credit equivalent amount that is included in the calculation of risk-weighted assets for purposes of this rule. Assets not included for purposes of calculating capital pursuant to § 567.5 of this part are not included in calculating riskweighted assets.

(1) On-Balance Sheet Assets: The risk categories/weights for on-balance sheet

assets are:

(i) Zero percent Risk Weight (Category 1).

(A) Cash, including domestic and foreign currency owned and held in all offices of a savings association or in transit. Any foreign currency held by a savings association must be converted into U.S. dollar equivalents;

(B) Securities issued by and other direct claims on the U.S. Government or its agencies (to the extent such securities or claims are unconditionally backed by the full faith and credit of the United States Government) or the central government of an OECD country;

(C) Notes and obligations issued by either the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation and backed by the full faith and credit of the United States Government;

 (D) Deposit reserves at, claims on, and balances due from Federal Reserve Banks;

(E) The book value of paid-in Federal Reserve Bank stock; (F) That portion of assets that is fully covered against capital loss and/or yield maintenance agreements by the Federal Savings and Loan Insurance Corporation or any successor agency.

(G) That portion of assets directly and unconditionally guaranteed by the United States Government or its agencies, or the central government of

an OECD country.

(ii) 20 percent Risk Weight (Category 2).

- (A) Cash items in the process of collection:
- (B) That portion of assets collateralized by the current market value of securities issued or guaranteed by the United States government or its agencies, or the central government of an OECD country;

(C) That portion of assets conditionally guaranteed by the United States Government or its agencies, or the central government of an OECD

country;

(D) Securities (not including equity securities) issued by and other claims on the U.S. Government or its agencies which are not backed by the full faith and credit of the United States Government;

(E) Securities (not including equity securities) issued by, or other direct claims on, United States Government-

sponsored agencies;

(F) That portion of assets guaranteed by United States Government-sponsored agencies;

(G) That portion of assets collateralized by the current market value of securities issued or guaranteed by United States Government-sponsored agencies;

(H) High quality mortgage-related securities, except for those classes with residual characteristics or stripped mortgage-related securities;

(I) Claims representing general obligations of any public-sector entity in an OECD country, and that portion of any claims guaranteed by any such public-sector entity;

(J) Bonds issued by the Financing Corporation or the Resolution Funding

Corporation;

(K) Balances due from and all claims on domestic depository institutions. This includes demand deposits and other transaction accounts, savings deposits and time certificates of deposit, federal funds sold, loans to other depository institutions, including overdrafts and term federal funds, holdings of the savings association's own discounted acceptances for which the account party is a depository institution, holdings of bankers acceptances of other institutions and securities issued by

<sup>4</sup> Capital instruments may be redeemed prior to maturity and without the prior approval of the Office, as long as the instruments are redeemed with the proceeds of, or replaced by, a like amount of a similar or higher quality capital instrument. However, the Office must be notified in writing at least 30 days in advance of such redemption.

The amount of the general valuation loan and lease loss allowances that may be included in capital is based on a percentage of risk-weighted assets. A savings association may deduct an allowance for general valuation loan and lease losses in excess of the amount permitted to be included as capital from the gross sum of risk-weighted assets in computing the denominator of the risk-based capital standard.

depository institutions, except those that qualify as capital;

(L) The book value of paid-in Federal Home Loan Bank stock;

(M) Deposit reserves at, claims on and balances due from the Federal Home Loan Banks:

(N) Assets collateralized by cash held in a segregated deposit account by the reporting savings association.

(O) Claims on, or guaranteed by, official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.

(P) That portion of assets collateralized by the current market value of securities issued by official multilateral lending institutions or regional development institutions in which the United States Government is a shareholder or contributing member.

(O) All claims on depository institutions incorporated in an OECD country, and all assets backed by the full faith and credit of depository institutions incorporated in an OECD country. This includes the credit equivalent amount of participations in commitments and standby letters of credit sold to other depository institutions incorporated in an OECD country, but only if the originating bank remains liable to the customer or beneficiary for the full amount of the commitment or standby letter of credit. Also included in this category are the credit equivalent amounts of risk participations in bankers' acceptances conveyed to other depository institutions incorporated in an OECD country. However, bank-issued securities that qualify as capital of the issuing bank are not included in this risk

(R) Claims on depository institutions incorporated in a non-OECD country, as well as claims on the central bank of a non-OECD country, with a residual maturity of one year or less.

(iii) 50 percent Risk Weight (Category

3). (A) Revenue bonds issued by any public-sector entity in an OECD country for which the underlying obligor is a public-sector entity, but which are repayable solely from the revenues generated from the project financed through the issuance of the obligations;

 (B) Qualifying mortgage loans and qualifying multifamily mortgage loans; (C) Non-high quality mortgage-related securities backed by qualifying mortgage loans, except for those with residual characteristics or stripped mortgage-related securities.

(iv) 100 percent Risk Weight (Category 4). All assets not specified above or deducted from calculations of capital pursuant to section 567.5 of this part, including, but not limited to:

(A) Consumer loans;(B) Commercial loans;(C) Home equity loans;

(D) Non-qualifying mortgage loans;

(E) Non-qualifying multifamily mortgage loans; (F) Residential construction loans;

(G) Land loans, except that portion of such loans that are in excess of 80% loan-to-value ratio;

(H) Nonresidential construction loans, except that portion of such loans that are in excess of 80% loan-to-value ratio;

(I) Obligations issued by any state or any political subdivision thereof for the benefit of a private party or enterprise where that party or enterprise, rather than the issuing state or political subdivision, is responsible for the timely payment of principal and interest on the obligations, e.g., industrial development bonds;

 (J) Private-issue debt securities except for those qualifying under paragraph
 (a)(1)(ii) of this section;

(K) Investments in fixed assets and premises;

(L) Intangible assets, including any goodwill not deducted from capital;

(M) Purchased and excess mortgage servicing rights;

(N) Any classes of a mortgage-related security with residual characteristics, regardless of the issuer or guarantor;

(O) All stripped mortgage-backed securities, including interest-only portions (IOs), principal-only portions (POs) and other similar instruments, regardless of the issuer or guarantor;

(P) That portion of equity investments not deducted pursuant to section 567.5 of this part;

(Q) The prorated assets of subsidiaries (except for the assets of includable, fully consolidated subsidiaries) to the extent such assets are included in adjusted total assets.

(v) 200 percent risk weight (Category 5).

(A) All repossessed assets or assets that are more than 90 days past due, provided that, 1-4 family residential real estate that is more than 90 days past due is placed in the 100% risk weight category;

(B) Equity investments that the Office determines have the same risk characteristics as real estate owned by the savings association. (vi) Ownership interests in investment

(A) Except as provided in paragraph (a)(1)(vi)(C) of this section, ownership interests in investment companies as defined in the Investment Company Act of 1940 are assigned to risk-weight categories under this section based upon the risk weight that would be assigned to the assets in the portfolio of the investment company.

(B) Where the portfolio of the investment company consists of assets that would fall into different risk-weight categories, or contains some assets that would be deducted in calculations of total capital, the entire ownership interest of the savings association will be assigned to the category of the asset with the highest risk weight in the portfolio or excluded from assets and thus deducted from calculations of total capital, as appropriate.

(C) On a case-by-case basis, the Office may allow the savings association to assign the portfolio proportionately to the various risk categories based on the proportion in which the risk categories are represented by the composition of assets in the portfolio. Before the Office will consider a request to proportionately risk-weight such a portfolio, the savings association must have and maintain current information for the reporting period that details the composition of the portfolio of assets.

(2) Off-Balance Sheet Activities. Risk weights for off-balance sheet items are determined by a two-step process. First, the face amount of the off-balance sheet item must be multiplied by the appropriate credit conversion factor listed in this section. This calculation translates the face amount of an offbalance sheet exposure into an onbalance sheet credit-equivalent amount. Second, the credit-equivalent amount must be assigned to the appropriate riskweight category depending on the obligor (i.e., the 20 percent risk-weight category if the obligor is a domestic depository institution or the 100 percent risk category if the obligor is a private party), provided that, the maximum riskweight assigned to the credit-equivalent amount of an interest-rate or exchangerate contract is 50 percent. Guarantees and other direct credit substitutes by savings associations of the obligations of their service corporations and subsidiaries that qualify as equity investments are assigned a creditequivalent amount of the entire value of the direct credit substitute. The following are the credit conversion factors and the off-balance sheet items to which they apply:

These institutions include, but are not limited to, the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Investments Bank, the International Monetary Fund and the Bank for International Settlements.

(i) 100 percent credit conversion

factor (Group A).

(A) Direct credit substitutes, including financial guarantee-type standby letters of credit that support financial claims on the account party. The face amount of a direct credit substitute is netted against the amount of any participations sold in that item (except as otherwise provided below). The amount retained by the savings association is converted to an on-balance sheet equivalent and assigned to the proper risk-weight category using the criteria regarding obligors, guarantors and collateral listed herein. Participations are treated as follows:

(1) If the originating savings association remains liable to the beneficiary for the full amount of the standby letter of credit, in the event the participant fails to perform under its participation agreement, the amount of participations sold are converted to an on-balance sheet credit equivalent using a credit conversion factor of 100%, with that amount then being assigned to the risk-weight category appropriate for the purchaser of the participation.

(2) If participations are such that each participant is responsible only for its pro-rata share of the risk, and there is no recourse to the originating institution, the full amount of the participations sold is excluded from the originating institution's risk-weighted assets;

 (B) Risk participations purchased in bankers, acceptances and participations purchased in direct credit substitutes;

(C) Assets sold under an agreement to repurchase and the value of assets sold with recourse, to the extent these assets are not included in the savings association's total assets, except where the amount of recourse liability retained by a savings association is less than the capital requirement for credit-risk exposure, in which case capita1 must be maintained equal to the amount of credit-risk exposure retained. This category includes loan strips sold without direct recourse where the maturity of the participation is shorter than the maturity of the underlying loan and the ownership of the subordinated portion of a loan participation or package of loans. This category includes loans serviced by associations where the association is subject to losses on the loans, commonly referred to as "recourse servicing". (Where associations hold a participation certificate ("PC") in a mortgage loan swap with recourse or a subordinated portion as an on-balance sheet asset, the PC or subordinated portion is not to be risk-weighted for purposes of the riskbased capital requirement. Instead, the

procedure outlined above is to be followed.

(D) Forward agreements and other contingent obligations with a certain draw down, e.g., legally binding agreements to purchase assets at a specified future date. On the date an institution enters into a forward agreement or similar obligation, it should convert the principal amount of the assets to be purchased at 100 percent as of that date and then assign this amount to the risk-weight category appropriate to the obligor or guarantor of the item, or the nature of the collateral;

(E) Indemnification of customers whose securities the savings association has lent as agent. If the customer is not indemnified against loss by the savings association, the transaction is excluded from the risk-based capital calculation. When a savings association lends its own securities, the transaction is treated as a loan. When a savings association lends its own securities or is acting as agent, agrees to indemnify a customer, the transaction is assigned to the risk weight appropriate to the obligor or collateral that is delivered to the lending or indemnifying institution or to an independent custodian acting on their behalf.

(ii) 50 percent credit conversion factor

(Group B).

(A) Transaction-related contingencies, including, among other things, performance bonds and performance-based standby letters of credit related to a particular transaction. To the extent permitted by law or regulation, performance-based standby letters of credit include such things as arrangements backing subcontractors' and suppliers' performance, labor and materials contracts, and construction bids;

(B) Unused portions of commitments, including home equity lines of credit, with an original maturity exceeding one year except those listed in paragraph (a)(2)(iv) of this section; and

(C) Revolving underwriting facilities, note issuance facilities, and similar arrangements pursuant to which the savings association's customer can issue short-term debt obligations in its own name, but for which the savings association has a legally binding commitment to either:

(1) Purchase the obligations the customer is unable to sell by a stated date: or

(2) Advance funds to its customer, if the obligations cannot be sold.

(iii) 20 percent credit conversion factor (Group C). Trade-related contingencies, i.e., short-term, selfliquidating instruments used to finance the movement of goods and collateralized by the underlying shipment. A commercial letter of credit is an example of such an instrument.

(iv) Zero percent credit conversion

factor (Group D):

(A) Unused commitments with an original maturity of less than one year;

(B) Unused commitments with an original maturity of greater than one year, if:

(1) They are unconditionally cancelable by the savings association, and

(2) The savings association has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition, before each draw under the lending facility; and

(C) Unused portion of retail credit card lines that are unconditionally cancelable in accordance with applicable law by the savings association and home equity lines of credit that are unconditionally cancelable in accordance with federal law.

(v) Interest-rate and exchange rate contracts (Group E).

(A) The credit equivalent amount of interest-rate and exchange rate contracts is the sum of:

(1) Current credit exposure, i.e., the replacement cost of the contract, measured in U.S. dollars, regardless of the currency specified in the contract. A savings association may net multiple contracts with a single counterparty only if those contracts are subject to novation. The term "novation" means a bilateral contract between two counterparties under which any obligation to each other to deliver a given currency on a given date is automatically amalgamated with all other obligations for the same currency and value date, legally substituting one single net amount for the previous gross obligations; and

(2) Potential credit exposure, i.e., an estimate of the potential increase in credit exposure over the remaining life of the contract. The add-on is calculated by multiplying the notional principal amount of the contract by one of the following credit conversion factors, as appropriate: 7

(i) Interest rate contracts:

 (A) Zero percent, if the contract has a remaining maturity of one year or less, and

No potential credit exposure is calculated for single currency floating/floating interest rate swaps; rather, the cn-balance sheet credit equivalent of these contracts is evaluated solely on the basis of the amount of their current credit exposure.

(B) 0.5%, for contract has a remaining maturity greater than one year;

(ii) Exchange rate contracts:
(A) 1.0%, if the contract has a remaining maturity of one year or less,

(B) 5.0%, for contracts with a remaining maturity greater than one

year.

(B) Risk weighting. The credit equivalent amount is then assigned to the proper risk-weight category using the criteria regarding obligors, guarantors, and collateral listed in paragraph (a)(2) of this section. However, the maximum risk weight assigned to the credit equivalent amount of an interest rate or exchange rate contract is 50%.

(C) Exceptions. The following contracts are not subject to the above calculation and, therefore, are not considered part of the denominator of a savings association's risk-based capital

ratio:

(1) Exchange rate contracts with an original maturity of 14 calendar days or

less; and

(2) Any interest rate or exchange rate contract that is traded on an exchange requiring the daily payment of any variations in the market value of the contract.

(b) [Reserved]

#### § 567.8 Leverage ratio.

Savings associations shall have and maintain core capital, as defined at 12 CFR 567.5(a), in an amount equal to at least 3.0% of adjusted total assets.

#### § 567.9 Tangible capital requirement.

(a) Savings associations shall have and maintain tangible capital in an amount equal to at least 1.5% of adjusted total assets.

(b) The following elements, less the amount of any deductions pursuant to paragraph (c) of this section, comprise a savings association's tangible capital:

(1) Common stockholders' equity (including retained earnings);

(2) Noncumulative perpetual preferred stock and related earnings;

(3) Nonwithdrawable accounts and pledged deposits that would qualify as core capital under § 567.5 of this part; and

(4) Minority interests in the equity accounts of fully consolidated subsidiaries.

(c) Deductions from tangible capital. In calculating tangible capital, a savings association must deduct from assets, and, thus, from capital:

(1) Any intangible assets (except for purchased mortgage servicing rights that are includable in assets and, therefore, not deducted from tangible capital) in the lesser of the amount specified in § 567.5(a)[2](iii)(A) of this part or any percentage specified by the Federal Deposit Insurance Corporation by regulation pursuant to section 5(t)(4)(C)(ii) of the Act; and

(2) Investments, both equity and debt, in subsidiaries that are not includable subsidiaries (including those subsidiaries where the savings association has a minority ownership interest), except as provided in paragraphs (c)(3) and (c)(4) of this section.

(3)(i) For investments described in paragraph (c)(2) of this section where the subsidiary was engaged before April 12, 1989 in activities that would not fall within the scope of activities in which includable subsidiaries may engage, a savings association must deduct from assets and, thus, capital the applicable percentage set forth in paragraph (c)(3)(ii) of this section of the lesser of:

(A) The savings association's investments in and extensions of credit to the subsidiary as of April 12, 1989; or

(B) The savings association's investments in and extensions of credit to the subsidiary on the date as of which the savings association's capital is being determined.

(ii) For purposes of paragraph (c)(3)(i) of this section, the applicable percentage is as follows:

For the period:	The applica- ble percent- age is:
Prior to July 1, 1990	0
July 1, 1990-June 30, 1991	
July 1, 1991-June 30, 1992	25
July 1, 1992-June 30, 1993	40
July 1, 1993-June 30, 1994	60
Thereafter	100

(iii) A savings association that has deducted a portion of its investment in a subsidiary pursuant to paragraph (c)(3)(i) of this section must consolidate the prorated assets of the subsidiary in calculating adjusted total assets for the tangible capital requirement by multiplying those prorated assets by the following applicable percentage and adding that amount to its adjusted total assets:

For the period:	The applicable percentage is:
Prior to July 1, 1990	100
July 1, 1990-June 30, 1991	90
July 1, 1991-June 30, 1992	75
July 1, 1992-June 30, 1993	60

For the period:	The applicable percentage is:
July 1, 1993–June 30, 1994	40

(4) If a savings association holds a subsidiary (either directly or through a subsidiary) that is itself a domestic depository institution the Office may, in its sole discretion upon determining that the amount of tangible capital that would be required would be higher if the assets and liabilities of such subsidiary were consolidated with those of the parent savings association than the amount that would be required if the parent savings association's investment were deducted pursuant to paragraphs (c)(2) and (c)(3) of this section, consolidate the assets and liabilities of that subsidiary with those of the parent savings association in calculating the capital adequacy of the parent savings association, regardless of whether the subsidiary would otherwise be an includable subsidiary as defined in § 567.1(1) of this part.

# § 567.10 Consequences of failure to meet capital requirements.

(a) Prior to January 1, 1991.

(1) During the period prior to January 1, 1991, the Director may restrict the asset growth of any savings association not in compliance with capital standards; and

(2) During the period prior to January 1, 1991, the Director shall require any savings association not in compliance with capital standards to submit a plan

 (i) Addresses the savings association's need for increased capital;

(ii) Describes the manner in which the savings association will increase capital so as to achieve compliance with capital standards;

 (iii) Specifies types and levels of activities in which the savings association will engage;

(iv) Requires any increase in assets to be accompanied by increase in tangible capital not less in percentage amount than the leverage limit then applicable;

(v) Requires any increase in assets to be accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable; and

(vi) Is acceptable to the Director.
(3) To be acceptable to the Director under this section, a plan must, in addition to satisfying all of the requirements set forth in paragraphs (a)(2)(i) through (a)(2)(v) of this section,

contain a certification that while the plan is under review by the Office, the savings association will not, without the prior written approval of its District Director:

(i) Grow beyond net interest credited; (ii) Make any capital distributions; or

(iii) Act inconsistently with any other limitations on activities established by statute, regulation or by the Office in supervisory guidance for savings associations not meeting capital standards.

(4) If the plan submitted to the Director under paragraph (a)(2) of this section is not approved by the Office, the savings association shall immediately and without any further action, be subject to the following restrictions:

(i) It may not increase its assets beyond the amount held on the day it receives written notice of the Director's disapproval of the plan; and

(ii) It must comply with any other restrictions or limitations set forth in the written notice of the Director's disapproval of the plan.

(b) On or after January 1, 1991, the Director shall:

 Prohibit any asset growth by any savings association not in compliance with capital standards, except as provided in paragraph (d) of this section; and

(2) Require any savings association not in compliance with capital standards to comply with a capital directive issued by the Director which may include the restrictions contained in paragraph (e) of this section and any other restrictions the Director determines appropriate.

(c) A savings association that wishes to obtain an exemption from the sanctions provided in paragraph (b)(2) of this section must file a request for exemption with its District Director. Such request must include a capital plan that satisfies the requirements of paragraph (a)(2) of this section.

(d) The Director may permit any savings association that is subject to paragraph (b) of this section to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities, if.

 The savings association obtains the Director's prior approval;

(2) Any increase in assets is accompanied by an increase in tangible capital in an amount not less than 3% of the increase in assets;

(3) Any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standards then applicable; (4) Any increase in assets is invested in low-risk assets; and

(5) The savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

(e) If a savings association fails to meet any of the regulatory capital requirements set forth in § 567.2 of this part, the Director may, through enforcement proceedings or otherwise, require such savings association to take one or more of the following corrective actions:

 Increase the amount of its regulatory capital to a specified level or levels;

(2) Convene a meeting or meetings with the Office's supervision staff for the purpose of accomplishing the objectives of this section;

(3) Reduce the rate of earnings that may be paid on savings accounts;

(4) Limit the receipt of deposits to those made to existing accounts;

(5) Cease or limit the issuance of new accounts of any or all classes or categories, except in exchange for existing accounts;

(6) Cease or limit lending or the making of a particular type or category

of loan;

(7) Cease or limit the purchase of loans or the making of specified other investments;

(8) Limit operational expenditures to specified levels;

(9) Increase liquid assets and maintain such increased liquidity at specified levels; or

(10) Take such other action or actions as the Director may deem necessary or appropriate for the safety and soundness of the savings association, or depositors or investors in the savings association.

(f) The Director shall treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, written agreement undertaken or order or directive issued to comply with the requirements of this section under this section.

## § 567.11 Reservation of authority.

(a) Transactions for purposes of evasion. The Director or the District Director for the region in which a savings association is located may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of regulatory capital or otherwise evading the requirements of this section.

(b) Average versus period-end figures. The Office reserves the right to require a savings association to compute its capital ratios on the basis of average,

rather than period-end, assets when the Office determines appropriate to carry out the purposes of this part.

(c) Reservation of authority. Notwithstanding the definitions of core and supplementary capital in § 567.5 of this part, the Office may find that a particular type of purchased intangible asset or a newly developed or modified capital instrument constitutes or may constitute core or supplementary capital, and the Office may permit one or more savings associations to include all or a portion of such intangible asset or funds obtained through such capital instrument as core or supplementary capital, permanently or on a temporary basis, for the purposes of compliance with this part or for any other purposes. Similarly, the Office may find that a particular asset or core or supplementary capital component has characteristics or terms that diminish its contribution to a savings association's ability to absorb losses, and the Office may require the discounting or deduction of such asset or component from the computation of core, supplementary, or total capital.

# § 567.20 Grandfathered capital forbearances.

(a) Scope. This section applies to any savings association that had been granted capital forbearance and entered into a capital plan pursuant to Section 10 of the Home Owners' Loan Act of 1933 or Section 416 of the National Housing Act, as these sections were in effect prior to their repeal by the FIRREA

("grandfathered savings associations"). As required under the prior forbearance provisions (see 12 CFR 563.47 (1988)). these capital plans contain a detailed description of the steps a savings association would take to meet its minimum capital requirements; they address the association's operations during the time it has capital forbearance; they include forecasts and pro forma financial statements and they set forth a reasonable time frame (not later than January 1, 1995) for achieving its minimum capita1 requirement; and they also contain any other restrictions required by the savings association's District Director in approving the plan. Pursuant to the FIRREA, the capital forbearances already granted to these savings associations are grandfathered subject to their continued reporting and adherence to their capital plans.

(b) Reporting. Each grandfathered savings association shall submit thorough and complete reports on such savings association's progress in meeting the goals set forth in its capital plan. Such reports must provide the District Director with a detailed ongoing evaluation of capital recovery progress and explain any deviations from the schedule, methods, operations, or goals set forth in the plan. These reports shall be submitted as frequently as required by the District Director, but not less often than semiannually.

(c) Termination of capital forbearance. status. (1) The District Director may determine that a savings association does not qualify for capital forbearance or no longer qualifies for capital

forbearance status, if:

(i) The savings association fails to comply with its capital plan;

(ii) Forbearance was granted contingent upon the occurrence of events that do not subsequently occur;

(iii) The savings association undergoes a change in control or a material change in management that was not approved by the District Director:

(iv) The savings association engages in practices inconsistent with achieving its minimum capital requirement;

(v) Information is discovered that was not made available to the District Director at the time the savings association qualified for capital forbearance and that indicates that forbearance should not have been granted;

(vi) The savings association's regulatory capital at the time of requesting forbearance was reported to be at least 0.5 percent, but is later found to have been below 0.5 percent;

(vii) The savings association engages in abusive, unsafe or unsound, or other

imprudent practices;

(viii) The savings association violates an agreement with, or order issued by the Office; or

(ix) The savings association fails to submit the reports required by paragraph (b) of this section.

(2) The District Director shall terminate a grant of forbearance when a savings association has attained its minimum regulatory capital requirement as calculated in accordance with this Part 567, or other capital level imposed by the Office.

(3) The District Director shall notify a savings association in writing if it no longer qualifies for capital forbearance stating the reasons for the termination. Such termination shall take effect upon receipt of such notification by the

savings association.

(4) Except if termination is contemplated for the reason set forth in paragraph (c)(2) of this section, as an alternative to denying or terminating capital forbearance, the District Director may permit the savings association to

revise its plan, and if such revision is approved by the District Director. capital forbearance may be granted or

(5) Any action by the District Director to terminate capital forbearance is deemed to be final action of the Office.

(d) Status of supervisory, enforcement, and other actions during capital forbearance participation. (1) While a savings association qualifies for capital forbearance, the Office shall not issue a capital directive pursuant to 12 CFR 567.4, institute supervisory or enforcement action to enforce the savings association's capital requirement, or take action to terminate the savings association's insurance, or place the savings association in conservatorship or receivership based on the savings association's inadequate

(2) Notwithstanding paragraph (d)(1) of this section, the Office will not forbear from taking any appropriate

action against-

(i) The savings association for matters other than inadequate capital, or

(ii) Any individual or entity other than the savings association for any matter, including inadequate capital.

(3) All existing supervisory or enforcement actions remain in effect unless lawfully modified or terminated.

(4) All regulations that address, relate to, or include a reference to regulatory capital or net worth remain in effect as before forbearance was granted, unless lawfully modified as applied to a particular savings association.

# PART 568-MINIMUM SECURITY DEVICES AND PROCEDURES

Scope of part and definitions. 568.1

Designation of security officer. 568.2

Security devices.

Security procedures. 568.4

Reports and records. 568.5 Corrective action.

568.6 Penalty provision. 568.7

Appendix A to Part 568-Minimum Standards for Security Devices

Appendix B to Part 568-Proper Employee Conduct During and After a Robbery

Authority: Secs. 2-5, 82 Stat. 294-295 (12 U.S.C. 1881-1884).

# § 568.1 Scope of part and definitions.

This part establishes minimum standards with which savings associations shall comply with respect to the installation, maintenance, and operation of security devices and procedures to discourage robberies, burglaries, and larcenies and to assist in the identification and apprehension of persons who commit such acts; sets time

limits within which savings associations shall comply with the standards; and provides for the submission of reports with respect to compliance. For the purposes of this part:

(a) The term "District Director" means the District Director who is responsible for the conduct of the Office's examinations of savings associations in the District in which a savings association's principal office is located.

(b) The term "business hours" means the time during which an office is open for the normal transaction of business with the public.

(c) The term "office" includes the principal office of a savings association

and any branch thereof. (d) The term "branch" includes any branch business quarters, agency, additional office, mobile facility, or any branch place of business located in any State or territory of the United States or in the District of Columbia at which investments in insured accounts are received or payments on loans are received.

(e) The term "teller's station or window" means a location in an office at which the savings association's customers routinely conduct transactions with the savings association's which involves the exchange of funds, including a walkup or drive-in teller's station or window.

# § 568.2 Designation of security officer.

On or before March 17, 1969 (or within 30 days after the effective date of insurance of accounts, whichever is later), the board of directors of each savings association shall designate an officer or other employee of the savings association who shall be charged. subject to supervision by the savings association's board of directors, with responsibility for the installation, maintenance, and operation of security devices and for the development and administration of a security program which equal or exceed the standards prescribed by this part.

# § 568.3 Security devices.

(a) Installation, maintenance, and operation of appropriate security devices. Before January 1, 1970 (or within 30 days after the effective date of insurance of accounts, whichever is later), the security officer of each savings association under such directions as shall be given him by the savings association board of directors, shall survey the need for security devices in each of the association's offices and shall provide for the installation, maintenance, and operation, in each such office, of

 A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the office;

(2) Tamper-resistant locks on exterior doors and exterior windows designed to

be opened;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary; and

(4) Such other devices as the security officer, after seeking the advice of law enforcement officers, shall determine to be appropriate for discouraging robberies, burglaries, and larcenies and for assisting in the identification and apprehension of persons who commit such acts.

(b) Considerations relevant to determining appropriateness. For the purpose of paragraph (a)(4) of this section, considerations relevant to determining appropriateness include, but are not limited to

 The incidence of crime against the particular office and/or against financial institutions in the area in which the office is or will be located;

(2 The amount of currency or other valuables exposed to robbery, burglary,

or larceny:

- (3) The distance of the office from the nearest responsible law enforcement officers and the time required for such law enforcement officers ordinarily to arrive at the office;
- (4) The cost of the security devices; (5) Other security measures in effect at the office; and

(6) The physical characteristics of the office structure and its surroundings.

(c) Implementation. It is appropriate for offices of savings association in areas with a high incidence of crime to install many devices which would not be practicable because of costs for small offices in areas substantially free of crimes against financial institutions. Each savings association shall consider the appropriateness of installing, maintaining, and operating security devices which are expected to give a general level of protection at least equivalent to the standards described in Appendix A of this part. In any case in which (on the basis of the factors listed in paragraph (b) of this section or similar ones, the use of other measures, or the decision that technological change allows the use of other measures judged to give equivalent protection) it is decided not to install, maintain, and operate devices at least equivalent to these standards, the institution shall preserve in its records a statement of the reasons for such decision.

§ 568.4 Security procedures.

(a) Development and administration. On or before July 15, 1969 (or within 30 days after the effective date of insurance of accounts, whichever is later), each savings association shall develop and provide for the administration of a security program to protect each of its offices from robberies, burglaries, and larcencies and to assist in the identification and apprehension of persons who commit such acts. The security program shall be reduced to writing, approved by the savings association's board of directors, and retained by the savings association in such form as will readily permit determination of its adequacy and effectiveness.

(b) Contents of security programs.Such security programs shall:

(1) Provide for establishing a schedule for the inspection, testing, and servicing of all security devices installed in each office; provide for designating the officer or other employee who shall be responsible for seeing that such devices are inspected, tested, serviced, and kept in good working order; and require such officer or other employee to keep a record of such inspections, testings, and servicings;

(2) Require that each office's currency be kept at a reasonable minimum and provide procedures for safely removing

excess currency;

(3) Require that the currency at each teller's station or window be kept at a reasonable minimum and provide procedures for safely removing excess currency and negotiable securities to a locked safe, vault, or other protected place;

(4) Require that the currency at each teller's station or window include "bait" money, i.e., used Federal Reserve notes, the denominations, banks of issue, serial numbers, and series years of which are recorded, verified by a second officer or employee, and kept in a safe place;

(5) Require that all currency and negotiable securities be placed in a vault or safe at the earliest time practicable after business hours, that the vault or safe be locked at the earliest time practicable after business hours, and that the vault or safe be opened at the latest time practicable before business hours;

(6) Provide, where practicable, for designation of a person or persons to open each office and require him or them to inspect the premises, to ascertain that no unauthorized persons are present, and to signal other employees that the premises are safe before permitting them to enter;

(7) Provide for designation of a person or persons who will assure that all security devices are turned on and are operating during the periods in which such devices are intended to be used;

- (8) Provide, where practicable, for designation of a person or persons to inspect, after the closing hour, all areas of each office where currency and negotiable securities are normally handled or stored in order to assure that such currency and negotiable securities have been put away, that no unauthorized persons are present in such areas, and that the vault or safe and all doors and windows are securely locked; and
- (9) Provide for training, and periodic retraining, of employees in their responsibilities under the security program including the proper use of security devices and proper employee conduct during and after a robbery, in accordance with the procedures listed in Appendix B of this part.

### § 568.5 Reports and records.

(a) Compliance reports. As of the last business day in June of 1970, and in connection with each periodic supervisory examination thereafter, each savings association shall file with the District Director a statement certifying to its compliance with the requirements of this part. The statement shall be dated and signed by the president or other managing officer of the association and may be in a form substantially as follows:

I hereby certify, to the best of my knowledge and belief, that this association has developed and administers a security program that equals or exceeds the standards prescribed by § 568.4 of the Rules and Regulations for Savings Association; that such security program has been reduced to writing, approved by this association's board of directors, and retained by this association in such form as will readily permit determination of its adequacy and effectiveness; and that this association's security officer, after seeking the advice of law enforcement officers, has provided for the installation, maintenance, and operation of appropriate security devices, as prescribed by § 568.3 of the Rules and Regulations for Savings Associations in each of this association's offices.

(b) Records of external crime. After a robbery, burglary or nonemployee larceny is committed or attempted at an office operated by a savings association, the savings association shall keep a record of the incident at its main office. The record may be a copy of a police, insurance or similar report of the incident. Alternatively, the savings association may wish to develop its own record indicating the office at which the incident occurred, the type of crime, when the crime occurred and the

amount of any loss; whether operational or mechanical deficiencies might have contributed to the crime; and what has been or will be done to correct the deficiencies.

(c) Special reports. Each savings association shall file such other reports as the Office may require.

### § 568.6 Corrective action.

Whenever the Office determines that the security devices or procedures used by a savings association are deficient in meeting the requirements of this part, or that the requirements of this part should be varied in the circumstances of a particular office, it may take or require the savings association to take necessary corrective action. If the Office determines that such corrective action is appropriate or necessary, the association will be so notified and will be furnished a statement of what the association must do to comply with the requirements of this part.

### § 568.7 Penalty provision.

Pursuant to section 5 of the Bank Protection Act of 1968, a savings association that violates any provision of this part shall be subject to a civil penalty not to exceed \$100 for each day of the violation.

### APPENDIX'A TO PART 568-MINIMUM STANDARDS FOR SECURITY DEVICES

In order to assure realization of maximum performance capabilities, all security devices utilized by a savings association should be regularly inspected, tested, and serviced by competent persons. Actuating devices for surveillance systems and robbery alarms should be operable with the least risk of detection by unauthorized persons that can be practicably achieved.

1. Surveillance systems—(a) General. Surveillance systems should be:

(1) Equipped with one or more photographic, recording, monitoring, or like devices capable of reproducing images of persons in the association's office with sufficient clarity to facilitate (through photographs capable of being enlarged to produce a one-inch vertical head-size of persons whose images have been reproduced) the identification and apprehension of robbers or other suspicious persons;

(2) Reasonably silent in operation; and

(3) So designed and constructed that necessary services, repairs or inspections can readily be made. Any camera used in such a system should be capable of taking at least one picture every 2 seconds and, if it uses film, should contain enough unexposed film at all times to be capable of operating for not less than 3 minutes, and the film should be at least 16mm.

(b) Installation and operation of surveillance systems providing surveillance of other than walk-up or drive-in teller's stations or windows and fully automated stations. Surveillance devices for other than walk-up or drive-in teller's stations or windows and fully automated stations should

(1) Located so as to reproduce identifiable images of persons either leaving the office or in a position to transact business at each such station or window; and

(2) Capable of actuation by initiating devices located at each teller's station or

window.

(c) Installation and operation of surveillance systems providing surveillance of walk-up or drive-in teller's stations or windows. Surveillance devices for walk-up or drive-in teller's stations or windows should be located in such a manner as to reproduce identifiable images of persons in a position to transact business at each such station or window and areas of such station or window that are vulnerable to robbery or larceny. Such devices should be capable of actuation by one or more initiating devices located within or in close proximity to such station or window. Such devices may be omitted in the case of a walk-up or drive-in teller's station or window in which the teller is effectively protected by a bullet-resistant barrier from persons outside the station or window. However, if the teller is vulnerable to larceny or robbery by members of the public who enter the office, the teller should have access to a device to actuate a surveillance system that covers the area of vulnerability or the exits to the office.

2. Robbery and burglary alarm systems-(a) Robbery alarm systems. A robbery alarm system should be provided for each office which is vulnerable to robbery and at which the police ordinarily can arrive within 5 minutes after an alarm is actuated; all other such offices should be provided with appropriate devices for promptly notifying the police that a robbery has occurred or is in progress. Robbery alarm systems should be:

(1) Designed to transmit to the police, either directly or through an intermediary, a signal (not detectable by unauthorized persons) indicating that a crime against the office has occurred or is in progress;

(2) Capable of actuation by initiating devices located at each teller's station or window (except walk-up or drive-in teller's stations or windows in which the teller is effectively protected by a bullet-resistant barrier and effectively isolated from persons, other than fellow employees, inside an office of which such station or window may be a part);

(3) Safeguarded against accidental transmission of an alarm;

(4) Equipped with a visual and audible signal capable of indicating improper functioning of or tampering with the system;

(5) Equipped with an independent source of power (such as a battery) sufficient to assure continuously reliable operation of the system for at least 24 hours in the event of failure of the usual source of power.

(b) Burglary alarm systems. A burglary alarm system should be provided for each office. Burglary alarm systems should be:

(1) Capable of detecting promptly an attack on a fully automated station and on the outer door, walls, floor, or ceiling of each vault, and each safe not stored in a vault, in which

currency, negotiable securities, or similar valuables are stored when the office is closed, and any attempt to move any such

(2) Designed to transmit to the police, either directly or through an intermediary, a signal indicating that any such attempt is in progress; and for fully automated stations and other offices at which the police ordinarily cannot arrive within 5 minutes after an alarm is actuated, designed to actuate a loud sounding bell or other device that is audible inside the office and for a distance of approximately 500 feet outside the station or office;

(3) Safeguarded against accidental

transmission of an alarm;

(4) Equipped with a visual and audible signal capable of indicating improper functioning of or tampering with the system;

(5) Equipped with an independent source of power (such as a battery) sufficient to assure continuously reliable operation of the system for at least 80 hours in the event of failure of

the usual source of power.

3. Walk-up and drive-in teller's stations or windows. Walk-up and drive-in teller's stations or windows contracted for after February 15, 1969, should be constructed in such a manner that tellers are effectively protected by bullet-resistant barriers from robbery or larceny by persons outside such stations or windows. Such barriers should be of glass at least 1% s inches in thickness, 1 of material of at least equivalent bulletresistance. Pass-through devices should be so designed and constructed as not to afford a person outside the station or window a direct line of fire at a person inside the station.

4. Vaults, safes, safe deposit boxes, night depositories, and automated paying or receiving machines. Vaults, safes (if not to be stored in a vault), safe deposit boxes, night depositories, and automated paying or receiving machines, in any of which currency, negotiable securities, or similar valuables are to be stored in fully automated stations or when offices are closed, should meet or exceed the standard expressed in this

section.

(a) Vaults. A vault is defined as a room or compartment that is designed for the storage and safekeeping of valuables and which has a size and shape which permits entrance and movement within by one or more persons. Other asset storage units which do not meet this definition of a vault will be considered as safes. Vaults contracted for after November 1, 1973,2 should have walls, floor, and ceiling of reinforced concrete at least 12 inches in thickness.3 The vault door should be made of

<sup>1</sup> It should be emphasized that this thickness is merely bullet-resistant and not bulletproof.

<sup>2</sup> Vaults contracted for previous to this date should be constructed in conformance with all applicable specifications then in effect.

The reinforced concrete should have: two grids of 5 (%" diameter) deformed steel bars located in horizontal and vertical rows in each direction to form grids not more than 4 inches on center; or two grids of expanded steel bank vault mesh placed parallel to the face of the walls, weighing at least o pounds per square foot to each grid, having a

steel at least 31/2 inches in thickness, or other drill and torch resistant material, and be equipped with a dial combination lock, a time lock, and a substantial lockable day-gate. Electrical conduits into the vault should not exceed 11/2 inches in diameter and should be offset within the walls, floor, or ceiling at least once so as not to form a direct path of entry. A vault ventilator, if provided, should be designed with consideration of safety to life without significant reduction of the strength of the vault wall to burglary attack. Alternatively, vaults should be so designed and constructed as to afford at least equivalent burglary resistance.

(b) Safes. Safes contracted for after February 15, 1969, should weigh at least 750 pounds empty, or be securely anchored to the premises where located. The body should consist of steel, at least 1 inch in thickness, either cast or fabricated, with an ultimate tensile strength of 50,000 pounds per square inch and be fastened in a manner equal to a continuous 1/4 inch penetration weld having an ultimate tensile strength of 50,000 pounds per square inch. The door should be made of steel that is at least 11/2 inches in thickness, and at least equivalent in strength to that specified for the body; and the door should be equipped with a combination lock, or time lock, and with a relocking device that will effectively lock the door if the combination lock or time lock is punched. One hole not exceeding 1/2 inch diameter may be provided in the body to permit insertion of electrical conductors, but should be located so as not to permit a direct view of the door or locking mechanism. Alternatively, safes should be constructed of materials that will afford at least equivalent burglary resistance

(c) Safe deposit boxes. Safe deposit boxes used to safeguard customer valuables should be enclosed in a vault or safe meeting at least the above-specified minimum protection

\$ 588.2.

(d) Night depositories. Night depositories (excluding envelope drops not used to receive substantial amounts of currency) contracted for after February 15, 1969, should consist of a receptacle chest having cast or welded steel walls, top, and bottom, at least 1 inch in thickness; a steel door at least 11/2 inches in thickness, with a combination lock; and a chute, made of steel that is at least 1 inch in thickness, securely bolted or welded to the

diamond pattern not more than 3" X 8"; or two grids of any other fabricated steel placed parallel to the

face of the walls, weighing at least 8 pounds per

square foot to each grid and having an open area

receptacle and to a depository entrance of strength similar to the chute. Alternatively, night depositories should be so designed and constructed as to afford at least equivalent burglarly resistance.<sup>5</sup> Each depository entrance (other than an envelope drop slot) should be equipped with a lock. Night depositories should be equipped with a burglar elarm and be designed to protect against the "fishing" of a deposit from the deposit receptacle, and to protect against the "trapping" of a deposit for extraction.

(e) Automated paying or receiving machines. Except as hereinafter provided, cash dispensing machines (automated paying machines), including those machines which also accept payments on savings accounts and/or loans (automated receiving machines) contracted for after November 1, 1973, should weigh at least 750 pounds empty, or be securely anchored to the premises where located. Cash dispensing machines should contain, among other features, a storage chest having cast or welded steel walls, top, and bottom, at least one inch in thickness, with a tensile strength of at least 50,000 pounds per square inch. Any doors should be constructed of steel at least equivalent in strength to the storage chest and be equipped with a combination lock and with a relocking device that will effectively lock the door if the combination lock is punched. The housing covering the cash dispensing opening in the storage chest and the housing covering the mechanism for removing the cash from the storage chest, should be so designed as to provide burglary-resistance at least equivalent to the storage chest and should also be designed to protect against the "fishing" of cash from the storage chest. The cash dispensing control and delivering mechanism (and, when applicable, cashpayment-receipt mechanism) should be protected by steel, at least 1/2 inch in thickness, securely attached to the storage chest. A cash dispensing machine which also receives payments on savings accounts and/ or loans should have a receptacle chest having the same burglary-resistant characteristics as that of cash dispensing storage chest and should be designed to protect against the fishing and trapping of payments. Necessary ventilation for the automated machines should be designed so as to avoid significantly reducing the burglary-resistance of the machines. The cash dispensing machine should also be designed so as to be protected against actuation by unauthorized persons, should be protected by a burglar alarm, and should be located in a well lighted area. Alternatively, cash dispensing machines should be so designed and constructed as to afford at least equivalent burglary-resistance. A cash

dispensing machine which is used inside an insured institution's premises only during business hours, and which is empty of currency and coin at all other times, should at least provide safeguards against "jimmying", unauthorized opening of the storage chest door, and against actuation by unauthorized

#### APPENDIX B TO PART 568—PROPER EMPLOYEE CONDUCT DURING AND AFTER A ROBBERY

With respect to proper employee conduct during and after a robbery, employees should be instructed:

1. To avoid actions that might increase

danger to themselves or others; 2. To activate the robbery alarm system

and the surveillance system during the robbery, if it appears that such activation can be accomplished safely;

3. To observe the robber's physical features, voice, accent, mannerisms, dress, the kind of weapon he has, and any other characteristics that would be useful for

identification purposes;

4. That if the robber leaves evidence (such as a note) try to put it aside and out of sight, if it appears that this can be done safely: retain the evidence, do not handle it unnecessarily, and give it to the police when they arrive; and refrain from touching, and assist in preventing others from touching. articles or places the robber may have touched or evidence he may have left, in order that fingerprints of the robber may be

5. To give the robber no more money than the amount he demands, and include "bait"

money in the amount given;

6. That if it can be done safely, observe the direction of the robber's escape and the description and license plate number of the vehicle used, if any;

7. To telephone the local police, if they have not arrived, and the nearest office of the Federal Bureau of Investigation, or inform a designated officer or other employee who has this responsibility, that a robbery has been committed:

8. That if the robber leaves before the police arrive, assure that a designated officer or other employee waits outside the office, if it is safe to do so, to inform the police when they arrive that the robber has left;

9. To attempt to determine the names and addresses of other persons who witnessed the robbery or the escape, and request them to record their observations or to assist a designated officer or other employee in so

10. To refrain from discussing the details of the robbery with others before recording the observations respecting the robber's physical features and other characteristics as hereinabove described and the direction of escape and description of vehicle used, if

### not exceeding 4 inches on center. Crids are to be located not less than 6 inches apart and staggered in each direction. The concrete should develop an ultimate compression strength of at least 3,000 pounds per square inch. \* Equivalent burglary-resistant materials for vaults do not include the use of a steel lining, either

inside or outside a vault wall, in lieu of the specified reinforcement and thickness of concrete. Nonetheless, there may be instances, particularly where the construction of a vault of the specified reinforcement and thickness of concrete would require substantial structural modification of an existing building, where compliance with the specified standards would be unreasonable in cost. in those instances, the institution should comply with the procedure set forth in paragraph (c) of

<sup>6</sup> Equivalent burglary-resistant materials for night depositories include the use of one-fourth inch steel plate encased in 6 inches or more of concrete or masonry building wall.

### PART 569—PROXIES

Sec.

569.1 Definitions.

569.2 Form of proxies.

569.3 Holders of proxies. 569.4 Proxy soliciting material.

<sup>6</sup> Equivalent burglary-resistant materials for cash dispensing machines include the use of % inch thick nickel stainless steel meeting American Society of Testing Materials (ASTM) Designation A 167-70, Type 304, in place of 1 inch thick steel, if other criteria are satisfied.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C.

### § 569.1 Definitions.

As used in this part:

(a) Security holder. The term "security holder" means any person having the right to vote in the affairs of a savings association by virtue of:

(1) Ownership of any security of the

association or

(2) Any indebtedness to the association.

For purposes of this part, the term "security holder" shall include any account holder having the right to vote in the affairs of a mutual savings association.

(b) Person. The term "person" includes, in addition to natural persons, corporations, partnerships, pension funds, profit-sharing funds, trusts, and any other group of associated persons of

whatever nature.

(c) Proxy. The term "proxy" includes every form of authorization by which a person is, or may be deemed to be, designated to act for the security holder in the exercise of his or her voting rights in the affairs of a savings association. Such an authorization may take the form of failure to dissent or object.

(d) Solicit; solicitation. The terms "solicit" and "solicitation" refer to:

(1) Any request for a proxy whether or not accompanied by or included in a form of proxy;

(2) any request to execute, not execute, or revoke a proxy; or

(3) the furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy. The terms do not apply, however, to the furnishing of a form of proxy to a security holder upon the request of such security holder or to the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

#### § 569.2 Form of proxies.

Every form of proxy shall conform to

the following requirements: (a) The proxy shall be revocable at

will by the person giving it. The power to revoke may not be conditioned on any event or occurrence or be otherwise limited; except that, in the case of a proxy relating to capital stock if such proxy is coupled with an interest, states such fact on its face, and is valid under the laws of the State in which it is to be exercised, such proxy may be made irrevocable to the extent permitted by such State law.

(b) The proxy may not be part of any other document or instrument (such as an account card).

(c) The proxy shall be clearly labeled "Revocable Proxy" in boldface type (at least as large as 18 point).

### § 569.3 Holders of proxies.

No proxy of a mutual savings association with a term greater than eleven months or solicited at the expense of the association may designate as holder anyone other than the board of directors [trustees] as a whole, or a committee appointed by a majority of such board.

### § 569.4 Proxy soliciting material.

No solicitation of a proxy shall be made by means of any statement, form of proxy, notice of meeting, or other communication, written or oral, which:

(a) Solicits any undated or postdated

(b) Solicits any proxy that provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder;

(c)(1) Contains any statement that is false or misleading with respect to any material fact, or

(2) Omits to state any material fact:

(i) Necessary in order to make the statements therein not false or misleading or

(ii) Necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter that has subsequently become false or misleading.

### PART 571—STATEMENTS OF POLICY

571.1 Appraisal of real estate securing assets of savings associations.

571.2 Audits of savings associations.

571.3 Interest-rate-risk management.

571.4 Hazard insurance.

571.5 Mergers and transfers of assets and liabilities.

571.6 Policy considerations regarding 'de novo' applications for a Federal savings association charter.

Conflicts of interest.

571.8 Investment in State housing corporations.

571.9 Corporate opportunity in savings associations.

571.10 Gold and gold-related transactions.

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571.12 Applications processing guidelines. 571.13 Participation interests in pools of loans.

571.14 Fidelity bonds; acceptable surety companies.

571.15 Fiduciary activities of state-chartered savings associations and service corporations.

571.16 Mortgage-backed-securities transaction.

571.17 Payment in gold or its equivalent.571.18 Accounting for troubled debt restructuring.

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571.24 Cuidelines relating to nondiscrimination in lending.

571.25 Accepting pooled accounts. 571.28 Classification of certain assets.

571.27 Appraisal policies and practices of savings associations and service corporations.

Authority: Sec. 552, 80 Stat. 383, as amended (5 U.S.C. 552); sec. 559, 80 Stat. 388, as amended (5 U.S.C. 559); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4. as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

### § 571.1 Appraisal of real estate securing assets of savings associations.

Section 563.170 provides that the examination of a savings association shall include appraisals when deemed advisable. It has been, and it now is, the policy of the Office to have the real estate securing a savings association's assets appraised when specific facts or information with respect to mortgage loans or lending, or with respect to operations in general give evidence that a savings association's appraisals may be excessive, that lending may be of a marginal nature, that appraisal policies and practices may not conform with generally accepted and established professional standards or that assets secured by real estate are overvalued. This statement of policy sets out the basic guidelines for a determination that appraisals should be obtained and the procedures to be employed in obtaining such appraisals.

(a) General. (1) Notwithstanding any provisions hereinafter set out in this statement of policy, appraisals may, and will, be made in any instance where, in the opinion of the Office, such appraisals are necessary to protect the interests of the Office, other savings associations, or the public. Further, the Senior Deputy Director for Supervision (Operations) has been, and continues to be, authorized to direct that an examination, including such appraisals as he deems advisable, be made at any time of any savings association and any statements made herein shall not act to modify or limit such authority.

(2) As used in this statement of policy, the term "appraiser" means an individual whose qualifications are demonstrated by means of education and/or experience appropriate to the complexity of the particular assignment. The fact that an appraiser is employed by a savings association on a fee or salary basis need not, of itself, adversely affect the acceptability of any report of appraisal prepared by or under the direct supervision of such appraiser.

(3) A determination to obtain appraisals must be the product of a careful consideration of current facts and factors and, therefore, such a determination will usually be geared to the orderly processes of examination.

(4) The exercise of judgment in arriving at a decision to obtain appraisals has been, and must continue to be, a matter which requires consultation and close cooperation between all examining and supervisory

personnel.

(b) Authority of District Director to obtain appraisals. The Office's District Director for the district in which the principal office of a savings association is located is authorized to obtain, in connection with any examination of such savings association, appraisals of real estate securing the savings association's assets when, in the opinion of the District Director, the savings association's policies and practices and operating results and trends are such as to cause concern over the quality of such assets. When the trend of the ratio of assets classified under § 563.160 is such that it raises serious question as to a savings association's financial condition, when it is apparent that assets secured by real property are worth substantially less than the book value thereof, or when there are other indications of the need to evaluate appraisal practices and policies, the District Director, or any designee of the District Director, is authorized to obtain, as a part of and in connection with an examination, appraisals of the real estate securing the savings association's loans and contracts.

(c) Additional authority of District
Director or his or her designee to obtain
appraisals. The District Director for the
district in which the principal office of a
savings association is located or any
designee is authorized to obtain, as a
part of and in connection with an
examination, appraisals of real estate
securing such savings association's
loans and contracts when an
examination discloses the following
conditions or such conditions are
otherwise known or found to exist:

(1) When the savings association's independent public accountant

disclaims an opinion on its financial statements in his report of audit because he is of the opinion that the fair market value of real estate securing assets is materially less than book value of such assets.

(2) When the savings association's independent public accountant expresses an opinion in his report of audit that the financial statements do not fairly present the savings association's financial position or results of operations because of potential losses in the loan portfolio or on the sale of real estate owned.

on the sale of real estate owned.
(3) When a borrower agrees or otherwise obligates himself to pay, or does pay, fees or other consideration to a third party to induce an inflow of funds to savings accounts or checking accounts in the savings association.

(4) When there have been two or more changes in record ownership of the security property in comparatively rapid succession within a short period of time, each such change being accompanied by a material increase in the reported purchase price.

(5) When the beneficial owner of the real estate is not directly obligated to the savings association for the

repayment of the debt.

(6) When an appraisal of incomeproducing real estate or vacant land, excepting such real estate being utilized in farming or similar agricultural pursuits, has not been made by a professional appraiser within a 3-year period preceding the Office's examination.

(7) When loan applications, contracts of sale, or other documents submitted to induce and support the granting of loans to finance the purchase of security properties do not disclose the true

purchase prices.

(8) In the case of loans or contracts granted or made to facilitate the sale by the savings association of real estate previously acquired by it as a result of foreclosure or voluntary deed in lieu thereof;

(i) When the appraisa1 supporting the loan or contract to facilitate exceeds by 10 percent or more the appraised value of the real estate at the time of acquisition by the savings association, unless both appraisals were made by an

appraiser or appaisers;

(ii) When the sales price of the real estate sold by the savings association is 10 percent or more above or below the appraised value of such real estate at the time of acquisition by the savings association, unless the appraisal at the time of acquisition was made by an appraiser.

(9) When a loan involves real estate in which an officer, director, employee, or attorney of or for the savings association, or any owner of 10 percent or more of the savings association's permanent, reserve, or guaranty stock, had a direct or indirect interest, financial or otherwise, of 10 percent or more, excepting real estate occupied by such officer, director, employee, attorney, or stockholder on his or her residence.

(10) When the original amount of a loan exceeds the greater of \$100,000 or one-fourth of 1 percent of the savings association's assets at the time such loan was granted, except loans secured by single-family dwellings, and the security for which was not appraised by

an appraiser.

(11) When real estate acquired since the date of the previous examination by foreclosure or voluntary deed in lieu thereof or in exchange for any scheduled items, which remains as real estate owned on the savings association's books at the time of the examination, was not appraised by an appraiser at the time of acquisition, excepting real estate temporarily held pending transfer to an insuring or guaranteeing agency of the U.S. Government.

(12) When other real estate owned by the savings association for a period of 3 or more years (excepting real estate occupied or to be occupied as a home, branch, or service office of such savings association) has not been appraised by an appraiser within the 3-year period

preceding the examination.

(d) [Reserved]

(e) Other bases for obtaining appraisals. It is not feasible to identify, or to state categorically or inflexibly, all of the other indications of the need to evaluate appraisal practices and policies. Many factors must be considered separately and in context in the light of the operations of each savings association, and economic conditions as they exist. However, the following broad areas of operation by a savings association will be of paramount supervisory concern and essential facts and information with respect to such matters will in large measure constitute the basis for determining whether or not appraisals should be made.

(1) Increase in funds for mortgage lending. The extent to which the savings association's expense ratio and dividend rate necessitate or have produced volume lending or lending at interest rates, or at interest rates plus fees, which materially exceed rates charged by responsible lenders in the area on prime real estate security—in order to provide sufficient revenue to pay expenses and dividends—are

matters of much importance. In evaluating this aspect or area of a savings association's operations consideration will be given not only to the dividend rate and expense ratio as compared to other comparable savings associations in the same business area, but also to such matters as bonus (on top of a competitive dividend rate); inflow of funds to checking accounts and savings accounts from or through brokers; advertising of rate, rate increases, or other terms in a manner or by means which indicate pressure in the solicitation of accounts; extensive rate advertising in media outside the savings association's normal business area; use of give-aways, directly or through brokers, and any solicitation practices generally recognized as being inconsistent with accepted standards in the conduct of responsible savings associations. In order to evaluate the extent of any mortgage lending pressures to which the savings association is subjecting itself, consideration may also need to be given to the use of borrowed money and to sales of loans for relending purposes.

(2) Increase in mortgage lending. A material increase in the amount of loans made, as compared to an approximate equal period next preceding that covered by an examination, might be indicative of lending policies and practices which would call for appraisals. A determination to have appraisals made in connection with an examination would be well based if any of the following conditions or practices are found, particularly when such conditions or practices are coupled to the mortgage lending pressures described in paragraph (e) of this

(i) A significant amount of loans made at interest and/or fee charges which are higher than charges generally being made by other comparable savings associations in the area.

(ii) Loans made to borrowers with whom the savings association has previously had material difficulty.

(iii) A series of loans or advances within a short period of time, on the same security property, particularly if these transactions are accompanied by increased appraisals without commensurate improvement of or addition to the security.

(iv) Material concentration of loans on real estate in declining areas, or to a few speculative or operative builders.

(v) Appraisal of real estate security at amounts which substantially exceed sales prices, particularly in the case of new construction which is sold on a competitive, free market and not subject to temporary adverse economic

conditions in the community or to other considerations which in certain limited circumstances might justify an appraisal in excess of purchase price.

(vi) Disbursement of construction loan proceeds in advance of the progress of construction or of value at the time

disbursement is made.

(vii) Inadequate loan applications, credit information, or documentation of the disbursement of proceeds of loans.

(viii) Granting or extension of mortgage credit to speculative builders when the borrower is already indebted to the savings association on loans secured by properties which have remained unsold for a substantial period of time following completion.

(3) Other considerations. (i) While the condition and operations of a savings association as measured by the factors enumerated in paragraph (e) of this section would generally be determinative, the identification of those matters is not intended as even a suggestion that consideration should not be given to other matters, separately or in context with one or more of the factors stated.

(ii) Among other considerations to which careful attention should be given in connection with a determination as to whether or not appraisals should be

A) Failure to follow an aggressive collection policy or to observe recognized standards in determining the ability of borrowers to undertake and to pay their mortgage obligations.

(B) Inventory of completed but unsold houses in the savings association's lending area, particularly where the savings association is continuing to make speculative construction loans or is subject to the investment pressures previously described.

(C) The number and amount of speculative construction loans as to which there is a relatively substantial deficiency in funds available for completion of construction.

(f) Selection of appraiser. The Distict Director for the district in which the principal office of a savings association is located will select the appraiser or appraisers to make appraisals under this program. When making the selection, the District Director shall, insofar as is feasible, make such selection from those appraisers who do not regularly make appraisals for competing savings associations in the community.

(g) Purpose and type of appraisals. (1) The purpose of obtaining appraisals is to provide information and data essential to the proper discharge of the Office's supervisory responsibilities. The facts of each particular situation will, in large measure, determine the type of

appraisal activity. Thus, appraisals may be obtained in order to test overall appraisal policies and practices, to determine the results of the application of specific policies and practices in relation to specific lending areas of property types, to estimate potential losses, etc. The District Director will select such appraisal procedure as will, in his opinion, best disclose the deficiencies and permit such supervisory action as may be appropriate.

(2) The District Director may obtain the services of an appraiser to make actual, physical appraisal of specific properties, to review and evaluate the savings association's appraisal policies and procedures, or to make a preliminary appraisal or survey. The latter procedure is to estimate the highest and best use of the property, to select the approach which, in his opinion, will develop the most rational value indication, to ascertain whether the neighborhood is improving, stabilizing, or declining, to determine the condition of the property, etc. Dependent on the purpose of the appraisal assignment the District Director may select any one or combination of the three procedures.

(3) Regardless of the appraisal procedure utilized, the appraiser will submit a written report of his findings to the District Director. When a preliminary appraisal survey is made, the appraiser's report of findings will specifically include an opinion regarding the sufficiency of data and the reasonableness of estimates of value shown on the savings association's reports of appraisal.

(h) Selection of properties to be appraised. An examiner designated by the District Director will select properties to be appraised. Depending on the purpose of the appraisals, selection may encompass a sampling of the security for the newer loans, the security for the entire loan portfolio, the security for substandard loans, the security for certain types of classes of

loans, or real estate owned.

(i) When appraisals need not be obtained. (1) Appraisals need not be obtained in connection with the examination of any state-chartered savings association the principal office of which is located in a state where the appropriate state supervisory authority has established and maintains an appraisal procedure acceptable to the Office whereby appraisers on the staff of such state authority make appraisals of real estate security in connection with examinations of each such savings association, provided that the results of

such appraisals are made known by such state authority, in writing, to the Office's District Director for the district in which such state is located.

(2) Appraisals generally need not be

obtained on:

(i) Real estate securing insured or

guaranteed loans;

(ii) Real estate securing loans or contracts purchased within the preceding 3-year period from either a predecessor agency of the Office prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, or from the FDIC;

(iii) Real estate securing loans or contracts acquired as a result of a merger or purchase of assets made for supervisory purposes within the

preceding 3-year period;

(iv) Real estate acquired as a result of a merger or purchase of assets for supervisory purposes within the preceding 3-year period;

(v) Real estate previously appraised as a part of and in connection with an examination by the Office's examiners,

except:

(A) Income-producing real estate or vacant land (exclusive of such real estate utilized in farming or similar agricultural pursuits) not appraised by an appraiser within a 3-year period preceding the examination; and

(B) Real estate (exclusive of that occupied or to be occupied as a home branch or service office of the savings association) owned by the savings association for a period of 3 or more years and which has not been appraised by an appraiser within the 3-year period preceding the examination.

### § 571.2 Audits of savings associations.

(a) Introduction. (1) Section 563.170(a)(2) of this subchapter requires each savings association to be audited at least once in each calendar year by auditors and in a manner satisfactory to the Office. This audit requirement subjects the accounting policies, procedures, and records and the internal control of each savings association to periodic, independent, critical review and evaluation, thus enhancing the probability that financial statements and reports to the Office will be proper and that conditions that could affect adversely the savings association, other savings associations, the Office, or the public will be detected. This statement sets forth the policies and criteria for determining that an auditor or an audit is satisfactory to the Office.

(2) The provisions of this statement of policy shall not in any manner modify or limit the Office's authority, as set out in § 563.170(a) of this subchapter, to make, or cause to be made, at any time, an audit of a savings association (including appraisals when deemed advisable) or to assess against such savings association the cost of any audit made pursuant to such authority.

(3) As used in this section, the title "District Director" refers to the Office's District Director for the district in which the principal office of any savings

association is located.

(b) General policy. Except as provided in paragraph (e) of this section, each savings association must satisfy the audit requirement of § 563.170(a) of this subchapter by means of an audit by a public accountant or internal auditor. To be acceptable to the Office, auditors must be qualified and independent and must follow recognized rules of ethics and conduct; reports of audits must meet the requirements of this section and comply with such additional requirements as may be contained in bulletins issued by the Senior Deputy Director for Supervision (Operations) or instructions issued by a District

(c) Audits by public accountants or internal auditors—(1) Procedure. (i) When the board of directors of a savings association elects to have an audit performed by a public accountant, an officer of the savings association, within 15 days following such action, shall notify the District Director of such action and of the public accountant engaged to perform such service. The District Director also shall be notified within 15 days following any action terminating the services of a public

accountant.

(ii) When the board of directors of a savings association elects to satisfy the regulatory audit requirements by means of an audit by an internal auditor, it shall, by resolution, disclose its intention to establish an internal audit program, outline the objectives and the basic minimum requirements of the program, specify the date when the program will commence and designate a full-time salaried employee or officer of the savings association, who shall report and be accountable directly to the board of directors, to perform the function of internal auditor. A certified copy of such resolution shall be filed with the District Director at least 90 days prior to commencement of such internal audit program. Any changes in the objectives and minimum requirements of the program or in the person responsible for implementation of such program shall be accomplished by appropriate resolution of the board of directors. A certified copy of each such resolution shall be filed with the District Director.

(2) Qualification of public accountant or internal auditor. (i) The term

"qualified public accountant" refers to a person who is a certified public accountant or licensed public accountant, certified or licensed by a regulatory authority of a State or other political subdivision of the United States and who is in good standing as such under the laws of the State or other political subdivision of the United States in which is located the home office of the savings association that is to be audited. Any other person will not be deemed to be a qualified public accountant unless, as of April 15, 1966, such person had an established client relationship with a savings association and had filed with the District Director a report of audit that was acceptable under then existing requirements.

(ii) The term "qualified internal auditor" refers to a person who has had adequate technical training as an auditor and who has proficiency as an auditor, an understanding of audit objectives, and a working knowledge of savings and loan operations. When a board of directors designates a person as an internal auditor, that person's qualifications shall be submitted to the District Director, who shall make an initial review of and decision as to the acceptability of that person as an internal auditor. Such initial review and acceptance shall not be final; continuing acceptance will depend on the internal auditor's ability to carry out the internal audit program in a manner which meets the requirements of the Office.

(3) Independence of public accountant or internal auditor. (i) To be acceptable, an audit must be made by a qualified public accountant or internal auditor who is in fact independent. While it is not feasible to identify or to state categorically or inflexibly all of the criteria for judging the independence of an auditor, the most common conditions that contribute to a lack of independence are set out hereafter.

(ii) A public accountant will not be considered to be independent if he:

- (A) Is connected with the savings association or any of its subsidiaries or affiliates as an officer, director, attorney, or employee, or is a member of the immediate family of an officer, director, attorney, or employee of the savings association or any of its subsidiaries or affiliates;
- (B) Is the beneficial owner, directly or indirectly, of any shares of permanent, reserve, or guaranty stock of the savings association;
- (C) Has any proprietary interest in any partnership, corporation, syndicate, or other business or legal entity which, directly or indirectly, controls the

savings association or any of its subsidiaries or affiliates;

(D) Is a borrower from the savings association or any of its subsidiaries or affiliates except with respect to:

(1) A loan on the security of his

residence:

(2) A loan to make alterations, repairs, or improvements to his residence;

(3) A loan secured solely by his savings credits in the savings association; or

(4) A consumer loan either unsecured or secured by goods used or bought primarily for personal, family, or

household purposes.

(E) Makes entries or postings on the books of account or performs any other operating functions for the savings association or any of its subsidiaries or affiliates, except such functions for which prior approval was requested and obtained, in writing, from the District

(F) Receives any special consideration in any transaction with the savings association or its subsidiaries or affiliates, or has any interest, direct or indirect, financial or otherwise, in any real property owned by, or securing any loan made by, the savings association or any of its subsidiaries or affiliates, except as provided in paragraph (c)(3)(ii)(D) of this section, or in any other operating activity or function of the savings association or of any of its subsidiaries or affiliates; or

(G) Has any conflict of interest, or the appearance thereof, by reason of business or personal relationships with management or those individuals who, by ownership of stock, control of proxies, or otherwise, are in a position to influence management or its decisions

or functions.

(iii) An internal auditor is subject to the same tests of independence as are applicable to a public accountant, except that an internal auditor must be a full-time salaried employee or officer of the savings association. In addition, an internal auditor will be considered to be independent of operating responsibilities and able to function properly as an internal auditor only if he has, and is able to exercise, authority to audit any department of the savings association without notice and has complete and unrestricted access to all records of such savings association.

(iv) The requirements as to independence are applicable to those members and employees of a firm of public accountants who, in any way, are in a position to influence or control the conduct of an audit of a savings association or to influence or control the presentation of facts and other information in the report of such audit.

(v) It is the responsibility of the public accountant or internal auditor to disclose to the District Director any unusual relationships or affiliations he may have with the savings association. any affiliate or subsidiary of the savings association, or any persons closely connected with the savings association, and to have resolved any question as to independence before proceeding with

(4) Reports of audit. Section 563.170(a)(2) of this subchapter requires a savings association to "promptly" file with the Office, through the District Director, a copy of the report of each audit. Pursuant to this requirement, a savings association shall file such copy, or cause it to be filed, with the District Director, no later than 15 days following the receipt thereof. For the purpose of this filing requirement, the term "report of audit" includes, in addition to the audit report itself, any special or supplemental reports, letters or reports to management, or any other documents which are related to the audit or the report thereof. A savings association shall file, or cause to be filed, with the District Director, a copy of any such special or supplemental material no later than 15 days following the receipt thereof.

(d) Authority of District Director. (1) The District Director shall determine whether an auditor is satisfactory to the Office, whether an audit was conducted in a manner satisfactory to the Office, and whether a report of audit is to be accepted. If, at any time, it is found that a public accountant or internal auditor has not followed recognized rules of ethics or conduct, was not in fact independent, has knowingly made any material misstatement of fact or circumstance or any material misrepresentation of any kind, or has otherwise failed to meet any of the requirements set out in this statement, in bulletins issued by the Senior Deputy Director for Supervision (Policy), or in instructions issued by the District Director, the District Director may reject the audit and may determine that, for such time period as he may set, reports of audit by the public accountant or internal auditor who made such rejected audit shall not be acceptable to the Office. Upon request by such public accountant or internal auditor, such determination shall be reviewed by the Senior Deputy Director for Supervision

(2) In the event of the rejection of an audit or the failure of a savings association to arrange to be audited either by an auditor or in a manner satisfactory to the Office, the District Director is authorized to have an audit

(Operations).

made by an auditor in a manner satisfactory to the Office.

(3) Upon proper application made by a savings association in conformity with paragraph (e) of this section, the District Director may waive or modify for 1 fiscal year, and to such extent as he may deem appropriate, the general policy requiring an audit by a public accountant.

(e) Waiver or modification of general policy requiring audit by public accountant-(1) General. A savings association which is located in an area where audit services by a qualified public accountant are not readily available, or where the costs of such services are beyond the means of the savings association, may make application to the District Director for waiver or modification of the general policy requiring an audit by a public accountant.

(2) Application form; supporting information. An application made pursuant to paragraph (e)(1) of this section shall be in the form of a letter addressed to the District Director and signed by the chief executive officer of the savings association upon the express authorization of its board of directors. Such application shall request the waiver or modification of the general policy requiring an audit by a public accountant for the succeeding fiscal year and shall set forth factual data supporting the savings association's representations that it is located in an area where audit services by a qualified public accountant are not readily available or the cost of such services is beyond its means. Such factual data should include, but need not be limited to, the actual or estimated cost (whichever is appropriate) of an acceptable audit of the savings association by an independent public accountant, including per-diem rates, the number of mandays required to make such audit at such rates, and any extra charges made for travel or other out-ofpocket expenses. If the savings association is state-chartered and the State has requirements as to audits by independent public accountants, the application shall be accompanied by a written statement by the State supervisory authority that it is willing to waive or modify its requirements if such application is approved by the District Director.

(3) Basis for waiver or modification by District Director. An application submitted pursuant to paragraphs (e)(1) and (e)(2) of this section shall be approved by the District Director unless, in his or her opinion:

(i) The savings association is located in an area where audit services by a qualified public accountant are readily available, or can be obtained, at a cost within its means;

(ii) The report of the most recent supervisory examination or audit discloses inadequate internal controls or accounting records as to which the savings association has not taken satisfactory corrective action;

(iii) The report of the most recent supervisory examination or audit discloses overvalued assets for which the savings association has not provided adequate valuation allowances or discloses any other adverse matter of substance; or

(iv) The savings association has a history of, or a trend toward, marginal operations or has problems requiring other than routine supervisory effort.

(4) Procedure. (i) An application for waiver or modification of the general policy requiring an audit by a public accountant shall be filed with the District Director no later than 90 days before the close of the fiscal year preceding that for which such waiver or modification is sought. An application applicable to the calendar year 1970, or to a fiscal year commencing in the 60-day period following the date of publication of this statement, shall be filed with the District Director no later than 45 days following the date of publication of this statement.

(ii) A savings association which has applied for waiver or modification of audit requirements shall be notified, in writing, of the District Director's approval or rejection of such application and, if it is rejected, the reasons therefor. Upon request by the applicant savings association, any such rejection shall be reviewed by the Senior Deputy Director for Supervision (Operations). Approval by the District Director may be conditioned upon the savings association's agreement to specified conditions, such as an agreement to have an independent accountant make a periodic review of internal control or verify certain assets.

(iii) During any fiscal year in which a waiver or modification of audit requirements is effective, the scope of any examination shall be expanded to include such audit procedures as the District Director may deem necessary or appropriate.

(iv) A savings association may apply for waiver or modification of sudit requirements for 1 fiscal year only. If a savings association wishes waiver or modification of audit requirements in subsequent years, a separate application for each year must be filed in conformity with this paragraph (e)(4)(iv). Each such

application shall be considered on its own merits and without regard to whether previous applications have been approved or denied.

### § 571.3 Interest-rate-risk management.

(a) General. A principal component of the income of savings associations is the difference between the yields earned on assets and the rates paid on liabilities. This component of income ("margin" or "spread") varies over time because the average interest rates paid on short-term deposits and other liabilities adjust more quickly to changes in interest rates than the average interest rates earned on long-term mortgage loans. Changes in interest rates also affect net asset values. Increases in interest rates, for example, lower net asset values because long-term interest-bearing assets in savings associations' portfolios decline in value. This sensitivity of income and net asset values to changes in interest rates is commonly referred to as "interest-rate risk." The larger the difference in average maturities between assets and liabilities, the greater the exposure to interest-rate risk. The interest-rate-risk management procedures required by § 563.176 of this Subchapter are intended to ensure that boards of directors and management of savings associations address the management of interest-rate risk

(b) Other risk management. While emphasizing interest-rate risk, this statement of policy is not intended to diminish attention paid to other forms of risk. The Office realizes that the means used to reduce interest-rate risk can increase other forms of risk, particularly the risk of default. In addition, the requisite degree of care and skill must be employed in pricing and structuring new assets, such as adjustable-rate mortgages, to reduce interest-rate risk and to ensure that the desired economic effect is achieved. The Office recognizes that the duties of boards of directors include overseeing the management of the various types of risk which affect their savings associations.

### § 571.4 Hazard Insurance.

(a) Each savings association has been required to include in its loan contracts provisions which require the maintenance of such hazard insurance as will protect the savings association from loss in the event of damage to or destruction of the real estate securing the savings association's loans.

(b) It is incumbent upon the savings association to determine that specific provisions of each hazard insurance contract insuring the security property name and protect the savings association as mortgagee in an amount at least equal to its insurable interest in the security and cover such perils as are commonly covered in policies described as "Standard Fire and Extended Coverage" as well as such other perils as to which institutional lenders operating in the same area commonly require hazard insurance.

(c) In conducting examinations of savings associations, examiners for the Office will review each savings association's files for evidence, in the form of individual insurance policies, memoranda of insurance or blanket policies satisfactory to the savings association, to determine that such insurance is in force.

### § 571.5 Mergers and transfers of assets and liabilities.

(a) General policy. This is a statement of the general policy of the Office on merger and transfer proposals. It does not ordinarily apply to mergers and transfers instituted for supervisory reasons. The term "merger" includes consolidations as well as statutory mergers, and the term "transfers" means transfers in bulk not made in the ordinary course of business including, but not limited to, transfers of assets and savings account liabilities, purchases of assets, assumptions of savings accounts and other liabilities, and transfers of assets in bulk that are effected by operation of law pursuant to statutory conversions, mergers, consolidations, and other reorganizations and combinations; Provided, however, That the term "transfers" shall not include transfers in bulk that are effected by operation of law pursuant to statutory conversions, mergers, consolidations, reorganizations, and combinations, where the surviving entity is a savings association. Transactions in accordance with § 545.82 of this chapter between a Federal savings association or a statechartered savings association and a finance subsidiary as defined in § 563.132(a)(4) of this subchapter are not "transfers" for purposes of this paragraph (a). Potential merger and transfer applicants are encouraged to review proposed transactions with the District Director or his or her designee prior to proceeding with the formal application process.

(b) Legal considerations—(1) General. Conformity under law and regulation is a precondition to approval by the Office. Applicable laws and regulations include the Federal antitrust laws (the Clayton and Sherman Acts), sections 5(d) and 18(c) of the Federal Deposit Insurance Act, the Community Reinvestment Act of 1977, applicable State law, and the

Office's own regulations. To enable the Office to make a legal evaluation of the possible anticompetitive impact of proposed mergers and transfers, applicants are required to submit certain information on prescribed forms available at each District Office and such other information as may be requested by the District Director or his or her designee. In any case in which the District Director or his or her designee believes it clear that no antitrust or competitive problem exists, a merger or a transfer proposal may be submitted with relevant partial information short of the complete data called for by the schedules.

(2) Acquisitions of savings
associations under section 10 of the
Home Owners' Loan Act. The Office's
Acquisition of Control of Savings
Associations regulations, 12 CFR Part
574, implement this statutory provision.
These regulations require information on
competitive factors similar to that
indicated in paragraph (b)(1) of this
section. The regulations also require
information as to additional matters,
including details of acquisition, financial
and managerial resources, future
prospects, and the convenience and
needs of the community to be served.

(3) Antitrust considerations. (i) The Office will examine the impact of the merger or transfer on competition under the relevant antitrust laws and will not approve.

(A) Any proposed merger or transfer which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) Any other proposed merger or transfer transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

This analysis will be done for each relevant geographic market.

(ii) All firms reasonably competitive with the business of the parties to the subject transaction will be taken into account in determining deposit and loan market statistics and the competitive consequences of the merger or transfer. In determining whether a violation of the antitrust laws is likely, the Office

will examine all of the relevant facts, including:

(A) Competition currently existing in the relevant markets as demonstrated by the applicant, or otherwise determined by the staff;

(B) Market shares and the reliability thereof, whether based on deposits, loans or other pertinent criteria;

(C) The ranking of the resulting association and of other competitors in the relevant markets;

(D) The number and size distribution of competitors;

(E) Trends in the market toward concentration or deconcentration; and

(F) The history and pattern of expansion and growth in the market, including the existence of potential entrants and future procompetitive trends.

(4) Convenience and needs. The Office will also examine the extent to which the transaction will affect the convenience and needs of the communities to be served and the impact, if any, on operating efficiency of the resulting or purchasing savings association. In this regard, the Office will review the record of the acquiring association under part 563e of this chapter, and may deny an application based on an assessment of such association's Community Reinvestment Act record, and may approve an application on the condition that the association improve specific aspects of its community investment-related practices and performance.

(c) Managerial and financial aspects and future prospects—(1) Managerial aspects. The Office's primary requirement is that the resulting or purchasing savings association have the managerial and financial resources and future prospects to operate successfully. The experience and the performance record of the persons to be in control or in key managerial positions will be evaluated as to the probability of sound operation of the resulting or purchasing savings association. If a merger proposal provides for a temporary increase in the board of directors of a surviving Federal savings association to a number in excess of that permitted by the association's charter, the Office will deem such merger proposal provision to be an application for an appropriate charter amendment. The maximum number of directors, however, may not exceed a number equal to the total number of directors on boards of the involved savings associations on the date on which each savings association adopted the plan of merger, and the number of directors must be reduced to not more than 15, in accordance with an acceptable plan for complying with

§ 544.1 or § 552.3, within three years after its next annual meeting.

(2) Financial aspects. The overall operations and financial condition will be reviewed to determine the resulting or purchasing savings association's prospects of generating sufficient income to meet competition, making the required transfers to reserves, and conducting its affairs essentially free of supervisory concern. The adequacy of the regulatory capital of the resulting or purchasing savings association, relative to the risks inherent in its assets, and economic and other factors will be considered. Intangible assets will be closely reviewed.

(d) Factors relating to fairness and disclosure of the plan. The Office will review the fairness and disclosure of a merger or transfer proposal on the basis of the following criteria:

(1) Equitable treatment. The plan should be equitable to all concerned—savings accountholders, borrowers, creditors, and stockholders (if any) of each savings association—giving proper recognition of and protection to their respective legal rights and interests. The plan will be closely reviewed for fairness where the merger or transfer does not appear to be the result of arm's length bargaining or, in the case of a stock savings association, where controlling stockholders are receiving different consideration from other stockholders.

(2) Full disclosure. The application should make full disclosure of all written or oral agreements or understandings by which any person or company will receive, directly or indirectly, any money, property, service, release of pledges made, or other things of value, whether tangible or intangible, in connection with the merger or transfer.

(3) Compensation to officers. Compensation, including deferred compensation, to officers, directors and controlling persons of the disappearing savings association by the resulting savings association or a service corporation affiliate thereof should not be in excess of that which is reasonable and commensurate with their duties and responsibilities. The application should fully justify the compensation to be paid to such persons. The plan will be particularly scrutinized where any of such persons is to receive a material increase in compensation above that paid by the disappearing savings association prior to the commencement of merger negotiations. An increase in such compensation in excess of the greater of 15% or \$10,000 gives rise to presumptions of unreasonableness and

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sale of control. In the case of such an increase, evidence sufficient to rebut such presumptions should be submitted.

(4) Employment contracts. Any employment contracts should conform with § 563.39 of this subchapter.

(5) Advisory boards. The application should fully justify the need for, and the compensation to be paid to, an advisory board of the resulting savings association consisting of officers, directors or controlling persons of the disappearing savings association. The application should describe the duties and responsibilities of such advisory board. The plan will be particularly scrutinized where proposed advisory board fees exceed by more than 15 percent the director fees paid by the disappearing savings association prior to commencement of merger negotiations. Such an excess in advisory director fees gives rise to presumptions of unreasonableness and sale of control. In the case of such an excess, evidence sufficient to rebut such presumptions should be submitted, unless the advisory board fees do not exceed the fee per monthly meeting attended that the advisory directors of the acquiring savings association receive or \$150, whichever is greater. In the case of such an excess, evidence sufficient to rebut such presumptions should be submitted. unless, based on a schedule of 12 meetings per year, the advisory board fees do not exceed \$100 per meeting attended in the case of a disappearing savings association with assets of at least \$10,000,000 or \$50 if the disappearing savings association has assets of less than \$10,000,000. No advisory board fees should exceed the director fees paid by the resulting savings association and no advisory board fees should be paid to salaried officers or employees of the resulting savings association. If the disappearing savings association experienced significant supervisory problems prior to the merger, the application should also fully justify any selection as an advisory board member of a person who was a director, officer or controlling person of the disappearing savings association. Advisory board members should be elected annually for a term not exceeding one year.

(6) Retention of attorneys and other professionals. Neither the resulting savings association nor any service corporation affiliate thereof should agree, in connection with the merger, to retain any attorney, law firm or other person performing professional services for the disappearing savings association. Any such retention should be by decision of the resulting savings

association or affiliate, independent of

(7) Tie-in transactions. Neither the resulting savings association nor any service corporation affiliate thereof should agree, in connection with the merger, to purchase or lease any office building or space therein, or other property or business, from any officer, director or controlling person of the disappearing savings association. Any such purchase or lease should be by decision of the resulting savings association or affiliate, independent of the merger. The limitation on leasing does not apply to an assumption of an existing lease without change in its terms.

(8) Fees paid in connection with mergers and transfers. The application should state the name of each person or firm rendering legal or other professional services in connection with merger or transfer. The fee expected to be paid to each such person or firm should be stated, together with a description of the services being performed, the time expected to be spent in performing such services, the hourly rate or other basis used for determining the fee, and any relationship between such person or firm and an institutional party to the transaction. If a finder's or similar fee is to be paid in connection with the merger or transfer, the application should fully justify the payment and amount of the fee and state the name of the person or firm to whom the fee is to be paid. No finder's or similar fee should be paid to any officer, director, or controlling person of a savings association which is a party to the transaction.

(e) Accounting for goodwill. The proposed treatment of goodwill in connection with the merger or transfer must be fully described in the application. The computation and amortization of goodwill should be in accordance with accounting policies of the Office in effect at the time the application is filed.

(f) Noninducement affidavits. The application should include a noninducement affidavit on a prescribed form signed by each senior officer, director, and controlling person of each savings association which is a party to the transaction and each attorney or law firm regularly serving such savings association.

(g) Depository relationships. Neither the resulting savings association nor any service corporation affiliate thereof should, in connection with the merger, agree to continue any depository relationship of the disappearing savings association. Any such continuance should be by decision of the resulting savings association or affiliate, independent of the merger.

(h) Tax liability. In a merger, a tax ruling from the Internal Revenue Service or a tax opinion will be required.

(i) Transfers. In addition to the other requirements of this section applicable to the parties involved in transfer transactions, the application of a savings association which is a party to a transfer should provide a description of:

(1) The assets and liabilities subject to transfer and their contract rates;

(2) any discount rates used;

(3) the market value of the assets and liabilities subject to transfer; and

(4) the effect of the transfer on the savings association's cost of money and yield on assets.

(j) Sale of assets or liabilities—(1)
Accounting and valuation. The
application of a savings association
selling assets or account liabilities will
be reviewed under valuation and
accounting standards established by the
Office.

(2) Notice to accountholders. Notice of a proposed account transfer and the option of retaining the account in the transferring savings association shall be furnished to an affected accountholder:

(i) by a savings association transferring account liabilities to a savings association or other institution the accounts of which are not insured by Savings Association Insurance Fund, the Bank Insurance Fund, or the National Credit Union Share Insurance Fund; and

(ii) by any mutual savings association transferring account liabilities to a stock savings association. The required notice shall allow affected accountholders at least 30 days to consider whether to retain their accounts in the transferring savings association.

(3) Supervisory concerns. The Office will closely review a transfer of assets and savings account liabilities entered into by a savings association with regulatory capital, as defined in § 567.1 of this subchapter, calculated prior to the consummation of the transaction and without the benefit of inclusion of any net worth certificates of 0.5% or less of all liabilities. An application by such a savings association should demonstrate that the proposed transaction is beneficial to the shortterm and long-term viability of the savings association, that the transfer was negotiated at arm's length and that the transfer is not detrimental to the interests of the Savings Association Insurance Fund or the Bank Insurance Fund.

§ 571.6 Policy considerations regarding "de novo" applications for a Federal savings association charter.

The Office deems it advisable that de novo applicants for permission to organize a Federal savings association be informed of certain policies governing application review which the

Office will generally apply.

(a) Minimum initial capitalization. (1) In order to ensure adequate reserve levels for de novo applicants during their initial period of operations, it is the Office's policy that it will not approve any such applicant having less than three million dollars in initial capital stock (stock associations) or initial pledged savings (mutual associations), except as provided in paragraph (a)(2) of this section.

(2) The Office will consider approving a de novo applicant having at least two million dollars in initial capital stock (stock institutions) or initial pledged savings (mutual institutions) if the applicant provides in its application and in the business plan described in paragraph (b) of this section, that:

(i) The applicant will be located in, and intends to serve, an area with a population not exceeding 50,000; and

(ii) The applicant will be communityoriented, as demonstrated by:

(A) A substantial number of the organizers residing in the community in which the applicant is to be located;

(B) A plan to focus capital-raising activities on subscribers in the community in which the applicant will

be located;

(C) Provision of adequate local public deposit facilities acceptable to the Office, in the community in which the applicant will be located;

(D) A commitment to local home financing and related services; and

(E) Office concentration in the community in which the applicant is located and, if desired, in communities of similar size.

(iii) For purposes of determining appropriate minimum capital, the population of the area will be calculated upon a determination of the delineated market area or the county or Standard Metropolitan Statistical Area (SMSA) in which the association will be located, whichever is greater.

(iv) Any material change from the qualifying criteria set forth in paragraphs (a)(3)(i) and (a)(3)(ii) of this section may be made if the applicant has increased its capital to at least three million dollars and receives the prior approval of the District Director, or his

or her designee.

(b) Business and investment plans of newly-chartered associations. (1) Pursuant to section 5(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1815(a)(2)), the Office must consider the following factors enumerated in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) in order for an applicant to obtain insurance of accounts by the Federal Deposit Insurance Corporation:

(i) The financial history and condition

of the association;

(ii) The adequacy of its capital structure;

(iii) Its future earnings prospects; (iv) The general character and fitness of its management;

(v) The risk presented to the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(vi) The convenience and needs of the community to be served; and

(vii) Whether or not its corporate powers are consistent with the purposes of the Federal Deposit Insurance Act.

(2) Pursuant to section 5(e) of the Home Owners' Loan Act, the Office may grant a new Federal savings association charter only:

(i) To persons of good character and

responsibility;

(ii) If in the judgment of the Director of the Office a necessity exists for such association in the community to be served:

(iii) If there is a reasonable probability of the association's usefulness and success; and

(iv) If the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

(3)(i) In order for the Office to consider the factors enumerated in section 5(a)(2) of the Federal Deposit Insurance Act and to make the determinations required under section 5(e) of the Home Owners Loan Act of 1933, a de novo applicant for a federal charter shall submit a business plan describing its management, operations, investments, and financial projections for the first three years of operation. The business plan shall provide for the continuation or succession of competent management subject to the approval of the District Director, and shall further provide that any material change in, or deviation from, the business plan must receive the prior approval of the District Director.

(c) Composition of the board of directors. (1) A majority of a de novo association's board of directors must be representative of the state in which the association is located. The Office generally will consider a director to be representative of the state if such director resides, works or maintains a place of business in the state in which the association is located. If the association is located in a Metropolitan

Statistical Area (MSA), Primary Metropolitan Statistical Area (PMSA) or Consolidated Metropolitan Statistical Area (CMSA) which incorporates portions of more than one state, a director will be considered representative of the association's state if he or she resides, works or maintains a place of business in the MSA, PMSA or CMSA in which the association is

(2) The de novo association's board of directors must be diversified and composed of individuals with varied business and professional experience. In addition, except in the case of a de novo association that is wholly-owned by a holding company, no more than onethird of a board of directors may be in closely related businesses. The background of each director must reflect a history of responsibility and personal integrity, and must show a level of competence and experience sufficient to demonstrate that such individual has the ability to direct the policies of the association in a safe and sound manner. Where a de novo association is owned by a holding company which does not have substantial independent economic substance, the foregoing standards will be applied to the holding company.

(d) Policies pertaining to management officials. (1) Proposed stockholders of ten percent or more of the stock of a de novo association will be considered as management officials of the association for the purpose of the Office's evaluation of the character and qualifications of the management of the association. In connection with the Office's consideration of an association's application for permission to organize and subsequent to issuance of a federal savings association charter to the association by the Office, any individual or group of individuals acting in concert, who owns or proposes to acquire, directly or indirectly, ten percent or more of the stock of an association subject to this policy, shall submit a Biographical and Financial Report to the District Director.

(2) Each new director of a de novo association shall sign an "Oath of Director for Savings Associations". The original of the document, executed, shall be submitted to the District Director.

(3) Any individual who is an (i) existing or proposed director, (ii) existing or proposed officer, or (iii) proposes to own, directly or indirectly, or acting in concert with any other individual, ten percent or more of the de novo association's stock, may not pledge more than 50 percent of his or her stock for a period of three years following issuance of the association's federal

savings association charter to secure borrowed funds to finance his or her

total stock purchase.

(4)(i) All controlling shareholders shall personally agree to maintain the association's regulatory capital at the required regulatory level for a minimum of five years after the granting of a federal charter. In determining whether to approve a proposed stock acquisition, the Office will consider the financial position of any proposed controlling shareholder and his or her ability to fulfill the regulatory capital maintenance agreement. Controlling shareholders shall execute an agreement with the Office that, in the event the association fails to meet its regulatory capital requirement, they will pay to the association an amount calculated as follows:

(A) If the controlling shareholder holds less than 80 percent of the total stock: The required payment will equal the percent of the association's total stock held by the controlling shareholder multiplied by the total regulatory capital deficiency of the

association.

(B) If the controlling shareholding holds 80 percent or more of the total stock: The required payment will equal 100 percent of the association's total

regulatory capital deficiency.

(ii) At the end of the fifth year after granting a federal charter, a controlling shareholder may apply to the District Director for a release from this obligation. Applicants may be released from the regulatory capital maintenance requirement if the District Director determines that the association is meeting its regulatory capital requirement and that there is no basis for supervisory concern.

(iii) Upon disposition of the stock of an association by a controlling shareholder who has executed a regulatory capital maintenance agreement pursuant to this section such that the shareholder no longer meets the definition of a controlling shareholder, the Director or his or her designee will release the obligation upon a showing

that:

(A) The association's regulatory capital meets its required regulatory

level, or,

(B) In the case where a person or persons propose to acquire 25 percent or more of the stock, such person or persons have assumed the obligation under the regulatory capital maintenance agreement and have demonstrated the financial capacity to perform such obligation.

(iv)(A) For purposes of this section the term "acting in concert" shall have the meaning set forth at § 574.2(c) of this subchapter: Provided, that organizers and members of the board of directors will not be deemed to be acting in concert, solely due to their joint activity in forming and/or managing a de novo association; however, other factors, such as agreements between the parties with respect to profits, losses or expenses, or which affect the disposition of their ownership interests, will be deemed to evidence that the parties are acting in concert.

(B) For purposes of this section, the term "controlling shareholder" shall mean any individual who will control, or any group of individuals acting in concert to control, or controlling persons for a company which does not have substantial independent economic substance that will control, directly or indirectly, 25 percent or more of the stock of a de novo association.

(e) In connection with an application for a federal charter for a de novo association, the applicant shall include a plan for avoidance of conflicts of interest and usurpation of corporate opportunity in the business plan required pursuant to paragraph (b) of this section. The plan shall:

(1) Identify specific areas where

(1) Identify specific areas where conflicts of interest and abuse of corporate opportunity may occur within the framework of the association's current management structure;

(2) Describe specific policies and actions that the association will institute to avoid potential conflicts of interest and corporate-opportunity abuses; and

(3) Establish specific procedures for dealing with directors and management officials who violate the association's

policies in these areas.

(f) This policy statement does not apply to any application for a federal savings association charter submitted in connection with a transfer or an acquisition of the business or accounts of a savings association if the Office determines that such transfer or acquisition is instituted for supervisory purposes or in connection with applications for federal charters for interim de novo associations chartered for the purpose of facilitating mergers or holding company reorganizations.

(g) For purposes of this section, the terms "de novo association" and "de novo applicant" mean any savings and loan association, building and loan association, homestead association, cooperative bank, or savings bank which has submitted to the District Director an application for permission to organize a Federal savings association, and the business of which has not been conducted previously under any charter or conducted in substantially the same form as is proposed to be conducted by

the *de novo* association for a period of three years.

### § 571.7 Conflicts of Interest.

(a) The Office has a paramount interest in the prevention and elimination of practices and conditions which adversely affect: The interests of members in savings associations; the soundness of such associations; the provision of economical home financing for the Nation; and the accomplishment of the other purposes of the Home Owners' Loan Act.

(b) Among the practices and conditions which have such adverse effects are conflicts between the accomplishment of the purposes of the Home Owners' Loan Act set forth in paragraph (a) of this section and the personal financial interests of directors. officers, and other affiliated persons of savings associations. Conflicts of this type which have demonstrably resulted in such adverse effects are considered by the Office to be inherently unsafe and unsound practices and conditions. The Office accordingly holds that each director, officer, or other affiliated person of a savings association has a fundamental duty to avoid placing himself or herself in a position which creates, or which leads to or could lead to, a conflict of interest or appearance of a conflict of interest having such adverse effects.

(c) The Office recognizes that it is impossible to define every practice or condition which falls within the broad concept of objectionable conflicts of interest. The Office has nevertheless issued various regulations to limit or prohibit certain conflicts of interest to reflect its conclusion that the conflicts so limited or prohibited are especially inimical to the accomplishment of the purposes of the Home Owners' Loan Act. However, the fact that the Office has not specifically limited or prohibited other conflicts of interest should not be interpreted as tacit approval thereof. The Office will continue to examine those conflict-of-interest situations which are not specifically limited or prohibited under the regulations and will, when circumstances so warrant, take appropriate action to prevent, circumscribe or eliminate such situations.

### § 571.8 Investment in State housing corporations.

Sections 545.43, 545.72 and 563.95 of this chapter authorize investment by Federal savings associations and regulate investment by state-chartered savings associations, in state housing corporations under section 5 of Pub. L.

93-100, and Title XVII of Pub. L. 95-630. A "state housing corporation" is defined by section 5(e)(3) of Pub. L. 93-100 as "a corporation established by a State for the limited purpose of providing housing and incidental services, particularly for families of low and moderate income." The Office believes the investment authority thereby provided is meant to be restricted to investment in:

- (a) Public corporations and agencies, and instrumentalities thereof, established for such limited purpose;
- (b) Private corporations and agencies established under a statute which specifically limits them to the same purpose.

#### § 571.9 Corporate opportunity in savings associations.

(a) Directors and officers of a savings association, and other persons having the power to direct the management of the association, stand in a fiduciary relationship to the association and its accountholders or shareholders. Out of this relationship arises, among other things, the duty of protecting the interests of the association. It is a breach of this duty for such a person to take advantage of a business opportunity for his or her own or another person's personal profit or benefit when the opportunity is within the corporate powers of the association or a service corporation of the association and when the opportunity is of present or potential practical advantage to the association. If such a person so appropriates such an opportunity, the association or service corporation may claim the benefit of the transaction or business and such person exposes himself or herself to liability in this regard. In determining whether an opportunity is of present or potential practical advantage to an association, the Office will consider, among other things, the financial, managerial, and technical resources of the association and its service corporation, and the reasonable ability of the association directly or through a service corporation to acquire such resources.

(b) The Office believes that usurpation of a savings association's corporate opportunity to engage in the insurance business, to the extent that such an usurpation is found to exist under State law, is violative of §§ 571.7 and 571.9(a) of this subchapter, is inconsistent with sound and economical home financing, and also constitutes an unsafe and unsound practice. In such a case, the Office believes that the savings association is entitled to profits attributable to the usurpation of the

corporate opportunity as provided under paragraph (e) of § 556.16 of this chapter.

#### § 571.10 Gold and gold-related transactions.

The authority of state-chartered savings associations and their service corporations to engage in transactions and activities involving gold (including gold coin) or gold-related instruments or securities, including buying, holding, selling, or otherwise dealing with gold or gold-related instruments or securities, is primarily a matter of state law. However, the Office's supervisory and examining personnel will carefully scrutinize any such transactions and activities by savings associations or their service corporations. The Office will regulate or prohibit any such transaction or activity if it determines that such transaction or activity constitutes an unsafe or unsound practice or is otherwise inconsistent with the purposes of section 4 of the Home Owner's Loan Act of 1933, as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989: Provided, That to the extent that they have independent legal authority to do so, savings associations may purchase, sell, and pay interest or dividends in, and their service corporations may purchase and sell, gold coins minted and issued by the United States Treasury, and engage in activities reasonably incident thereto.

### § 571.11 Exclusive leases and similar agreements.

(a) It is the policy of the Office to scrutinize leases, agreements, or understandings with respect to office or operating sites within a regional shopping center under which a savings association obtains the right to prohibit other financial institutions from leasing or otherwise acquiring office or operating space under control of the lessor or other person from whom the office or operating space is acquired. Such arrangements in some instances may violate the antitrust laws. They may involve restraints of trade under section 1 of the Sherman Act, attempts to monopolize under section 2 of that Act, or unfair methods of competition under section 5 of the Federal Trade Commission Act. Such violations could result in treble damage liability to the savings association with attendant risk to the Federal Deposit Insurance Corporation. Depending upon the facts of an individual case, the Office may determine that because of this risk such an arrangement is an unsafe or unsound practice for a savings association. In making this determination, the Office will consider among other facts the

market area in question and the size of the association involved.

(b) For purposes of this section, a regional shopping center is a group of commercial establishments planned. developed, owned or managed as a unit with off-street parking provided on the property, having a gross floor area of 400,000 square feet or more, and including as tenants, one or more department stores.

#### § 571.12 Applications processing guldelines.

(a) General. Section 410 of Title IV of the Competitive Equality Banking Act of 1987, Pub. L. 100-86, § 410, 101 Stat. 552, 620, generally requires that the Office (as successor to the Federal Home Loan Bank Board) "promulgate guidelines which provide that with respect to each type of completed application" filed by any person for approval by the Office. the application "shall be deemed to be approved" as of the end of the period prescribed under such guidelines unless the Office approves or disapproves such application before the end of such period (§ 410(a)). To comply with these requirements and to ensure the timely processing of applications and notices, the Office hereby sets forth guidelines for the processing of completed applications and notices (hereinafter collectively referred to as "applications") filed with the Office subsequent to October 9, 1987. This section does not apply to applications or requests related to transactions pursuant to §§ 13 (c) or (k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(c), (k); or requests submitted in connection with cease-and-desist orders, temporary cease-and-desist orders, removal and/or prohibition orders, temporary suspension orders, supervisory agreements, consent merger agreements, or documents negotiated in settlement of litigation (including requests for termination or modification of, or for approval pursuant to, such orders, agreements, or documents), or similar litigation or enforcement matters. Requests submitted in connection with cease-and-desist orders, removal/prohibition orders, supervisory agreements, merger agreements, and other documents negotiated in settlement of litigation ("enforcement documents") are not covered by this section. However, the fact that a regulation involving an application may be mentioned in an enforcement document does not mean that this section does not apply to that application. Requests to engage in activities that are restricted by enforcement documents and requests for

termination or modification of such documents are not covered by this section. Applications submitted pursuant to a regulatory requirement that the prior approval of the Office be obtained before engaging in a proposed activity, however, are covered, whether or not mentioned in an enforcement document. If the application or request is unique to the enforcement document, then it is not covered by this section. Requests for reconsideration, modification, or appeal of final agency actions of the Office are not covered by this section. In addition, where other regulations of the Office establish specific procedures for processing of applications or set forth specific time periods for automatic approval of applications unless such applications are disapproved or objections are raised, the provisions of those regulations are controlling with respect to the matters to which they pertain. Where a regulation sets forth a procedure for processing an application but does not contain a time period pursuant to which such application is to be processed, the application will be processed under the procedure established by the regulation, but will be subject to the time periods contained in this policy statement.

(b) Applications submitted for review. An application submitted to the Office for processing shall be submitted on the designated form of application and shall comply with all applicable regulations and guidelines governing the filing of

such application.

(c) Accepting applications for processing. (1) Within 30 calendar days of receipt of a properly submitted application for processing, the Office

(i) Request in writing additional information to complete the application,

(ii) Deem the application to be complete, or

(iii) Return the application if it is deemed by the Office to be materially deficient and/or substantially incomplete.

Failure by the Office to act as described in paragraph (c)(1)(i). (c)(1)(ii), or (c)(1)(iii) of this section within 30 calendar days of receipt of an application for processing shall result in the filed application's being deemed complete, thereby commencing the period for review. If an application includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 30 calendar days of receipt of a properly submitted application for processing, the Office requests in

writing additional information about the waiver request, or denies the waiver

request in writing.

(2) Failure by an applicant to respond fully to a written request by the Office for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of disapproval of a notice. If an application is deemed withdrawn, the application may be resubmitted for processing, but it will be deemed a new filing under the applicable statute or regulation.

(3) An applicant may request in writing a brief extension of the 30-day period for responding to a request for additional information described in paragraph (c)(2) of this section prior to the expiration of the 30-day time period. The Office, at its option, may grant an applicant a limited extension of time in writing. Failure by an applicant to respond fully to a written request for additional information by the expiration of the extended period permitted by the Office may be deemed to constitute withdrawal of the application or may be treated as grounds for denial of the application or issuance of a notice of

disapproval of a notice.
(4) The period for review by the Office of an application will commence on the date that the application is deemed complete. The Office shall notify an applicant in writing as to whether the application is deemed complete within 15 calendar days after the timely filing of any additional information furnished in response to any initial or subsequent request by the Office for additional information. If the Office fails to so notify an applicant within such time, the application shall be deemed to be complete as of the expiration of such 15day period. If additional information furnished in response to a written request by the Office for additional information includes a request for a waiver of an application requirement that certain information be supplied, the waiver request shall be deemed granted, unless within 15 calendar days after the timely filing of such additional information the Office (i) requests in writing additional information about the waiver request, or (ii) denies the waiver request in writing.

(5) After additional information has been requested and supplied, the Office may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the applicant at the time of the application, was concealed, or

pertains to developments subsequent to the time of the Office's initial request for additional information. With regard to information of a material nature that was not reasonably available from the applicant, was concealed at the time an application was deemed to be complete, or pertains to developments subsequent to the time an application was deemed to be complete, the Office may request in writing such additional information as it considers necessary and, at its option, may deem the application not to be complete until such additional information is furnished. Upon receipt of such additional information, the Office shall (i) request in writing further additional information to complete the application, (ii) deem the application to be complete and commence a new review period of the completed application, or (iii) deem the application to be materially deficient and/or substantially incomplete and return it to the applicant. In the case of an application that is not eligible for decision under delegated authority by the District Director, actions taken by the District Director or his or her delegate shall not commence any of the periods for review of a completed application described in paragraph (d) of this section.

(6) Where a regulation prescribes a procedure for submission of protests to an application and a protest is filed, the automatic approval timeframes specified herein shall be temporarily suspended until a record sufficient to support a determination on the protest is

developed.

(7) The Office, at its option, may deem an application to be materially deficient and/or substantially incomplete in the event that the applicant or an affiliate of the applicant is or becomes subject to an investigation, examination, or administrative proceeding by a federal or state or municipal court, department, agency or commission or other governmental entity, or a self-regulatory trade or professional organization that is pertinent to the standards applicable to the Office's evaluation of the application or relates to a determination the Office is required to make in connection with the application under the applicable statute or regulation.

(d) Failure by the Office to approve or deny an application or to disapprove a notice. (1) If, upon expiration of the applicable period for review of any complete application to which this policy statement applies, or any extension of such period, the Office has failed to approve or deny such application (or, in the case of a notice, to disapprove such notice), the application

shall, without further action, be deemed to be approved, or, in the case of a notice, not disapproved by the Office. For purposes of the previous sentence, the applicable period for review shall be (i) 60 calendar days for an application that is eligible for action by a District Director or his or her delegate or for any application or notice submitted pursuant to part 574 of the Office's regulations, or (ii) 90 calendar days for any other application.

(2) In the event that more than one application is being submitted in connection with a proposed transaction or other action, the applicable period for review of all such applications shall be the review period for the application having the longest period for review.

- (e) Extension of time for review. The applicable period for review of an application deemed to be complete may be extended by the Office for 30 days beyond the time period for review set forth in paragraph (d) of this section. The Office shall notify an applicant at least 20 days prior to the expiration of the applicable period for review of a complete application that such review period is being extended for 30 days and shall state the general reason(s) therefor.
- (f) Extension of time for Office's review of applications raising significant issues of law or policy. In those situations in which an application presents a significant issue of law or policy, the applicable period for review of such application also may be extended by the Director, the Chief Counsel, or the Senior Deputy Director for Supervision (Operations) beyond the time period for review set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section until such time as the Office acts upon the application. In such cases, written notice shall be provided to an applicant not later than the expiration of the time period set forth in paragraph (d) of this section or any extension thereof pursuant to paragraph (e) of this section that the period for review is being extended in accordance with this paragraph (f), which notice shall also state the general reason(s) therefor.

### § 571.13 Participation interests in pools of loans.

(a) When a savings association purchases a participation interest in a pool of loans (in the nature of mortgage-backed securities), compliance with the documentation requirements of \$\$ 563.90 and 563.170 of this subchapter may be impracticable. Where this is the case, the documentation requirements of

those provisions will be deemed satisfied if:

(1) Access to all loan documentation is provided by the originator/servicer upon request and without charge to any trustee of the pool, the Office or its examiners or District Directors, and upon request and subject only to reasonable charges incurred in providing such access to any savings association investing in the pool;

(2) The originator/servicer warrants as to each loan in the pool to or for the benefit of each savings association investing in the pool that as of the date participation interests in the pool were first issued:

first issued:

(i) No loan was 30 or more days delinquent;

(ii) Each loan met the requirements for investment by the savings association;

(iii) There were no delinquent tax or assessment liens or mechanics' liens on any collateral for the loans and the collateral was free of substantial damage and in good repair;

(iv) Each loan complied with all applicable state and Federal laws; and

(3) The originator/servicer has agreed to provide each savings association investing in the pool a monthly report of loan delinquencies. The report shall separately indicate

(i) The number and aggregate principal amount of loans delinquent one month and two or more months;

(ii) The book value of any collateral acquired by the pool through foreclosure, deed in lieu of foreclosure or other exercise of the originator/servicer's security interest in the collateral; and

(iii) The aggregate dollar amount or loans made by the pool, if any, on the security of the collateral if such loans are as described in paragraph (a)(3)(ii) of this section (other than insured loans, guaranteed loans, or contracts or loans having the benefit of a guarantee by the former Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation) if such loans have remaining expiration periods in excess of maximum regulatory limitations, or 30 years when there is no maximum term limitation, or have unpaid principal balances in excess of maximum regulatory limitations or 90 percent of the security value when there is no maximum regulatory percentage of value limitation.

(b) Although this Statement of Policy is addressed principally to compliance with regulatory requirements for purchase by savings associations of participation interests in pools of loans, it also applies to sales of participation interests in such pools by savings

associations having legal authority to sell participation interests in mortgages.

# § 571.14 Fidelity bonds; acceptable surety companies.

Section 563.190 of this subchapter in part requires each savings association to maintain bond coverage with a bonding company acceptable to the Office. Any surety or insurer meeting one or more of the following criteria is acceptable:

- (a) Underwriters holding certificates of authority as acceptable sureties on Federal bonds, as listed in the most recent issue of the United States Treasury Department Circular No. 570, to the limits established by such circular;
- (b) Underwriters currently licensed to issue surety bonds by the State in which the principal office of the savings association is located, subject to all restrictions and requirements imposed by the licensing State; or
- (c) Underwriters approved to do business as surplus lines insurers under the laws of the State in which the home office of the savings association is located, subject to all restrictions and requirements imposed by the surplus lines laws of such State.

### § 571.15 Fiduciary activities of statechartered savings associations and service corporations.

Although state law would primarily govern the fiduciary activities of statechartered savings associations and service corporations in which these institutions invest, it must be recognized that these activities may have implications with respect to the Federal interest in the safe and sound operation of savings associations. Accordingly, savings associations are urged to follow the standards for the exercise of trust powers contained in Part 550 of this chapter. Savings associations are particularly urged not to engage in dealings prohibited by § 550.10. In establishing trust departments, savings associations should also observe the procedures and policies required by §§ 550.5, 550.6, 550.7, 550.8, 550.9, 550.11, and 550.13. Savings associations should also take whatever steps are necessary to ensure that their service corporation subsidiaries adhere to these standards. The examinations staff will monitor the fiduciary activities of all savings associations and may take exception to practices which deviate materially from the standards of Part 550, and the Office may regulate or prohibit such fiduciary activities that threaten the safety or soundness of savings associations.

### § 571.16 Mortgage-backed-securities transaction.

- (a) General. (1) The accounting treatment described in this section for:
- (i) Reverse repurchase agreements; (ii) Dollar reverse repurchase
- agreements: (iii) Dollar reverse repurchase
- agreements-with rollovers or extensions; and

(iv) Rollovers or extensions of forward commitments to purchase mortgage-backed securities ("forward commitment dollar rolls") is to be used by all savings associations when preparing reports or financial statements primarily for filing with the Office.

(2) The accounting treatment for mortgage-backed securities transactions depends on whether the transactions are, in substance, sales and purchases of securities, financing transactions, or the rollover of forward commitments to purchase securities. When the security to be repurchased is not either identical to or substantially the same as the security sold, the transaction is considered to be a sale and purchase and not a financing transaction. This differentiation is critical since a sale and purchase requires recognition of gain or loss upon initiation of the transaction; a financing does not. Gain or loss shall be recognized upon rollover of forward commitments to purchase mortgage-backed securities.

(3) Repurchase agreements to maturity must be accounted for as sales and purchases and are not discussed in this statement of policy.

(4) A savings association engaging in mortgage-backed securities financing arrangements shall have readily available the following information

regarding such transactions: (i) Type of security and the time it has been held in portfolio before being used to enter into the sell/buy;

(ii) Detail of prices, interest costs and cash flows at each rollover;

(iii) Broker or other party to the transaction:

(iv) Expiration date of the contract: (v) A description of the security

reacquired; (vi) Documentation of the approval of the transactions by the savings association's board of directors.

(b) Reverse-repurchase agreements and rollovers of these agreements. (1) A reverse-repurchase agreement is an agreement (contract) to sell and repurchase ("sell/buy") the identical mortgage-backed security within a specified time at a specified price. These transactions are equivalent to borrowing funds in an amount equal to the sales price of the related mortgage-backed security. For example, if a savings

association wishes to borrow funds with a mortgage-backed security as collateral, it may, in lieu of direct borrowing, arrange to temporarily sell the security with an agreement to repurchase the identical security on a future date at a specified price. During the term of this agreement, the savings association continues to receive principal and interest payments on the

(2) In these transactions, mortgagebacked securities are "owned" and in the savings association's investment portfolio prior to the initial sell/buy. For purposes of this statement of policy. "owned" means mortgage-backed securities which are in portfolio and have been acquired by the savings association for investment purposes. Mortgage-backed securities which have been formed by the pooling of mortgage loans held by the savings association

meet these criteria. (3) Reverse-repurchase agreements involve identical securities, and the substance of the transaction is a borrowing. These agreements shall be accounted for as financing transactions with no current gain or loss recognition at the time of the sell/buy. When funds are borrowed under a reverserepurchase agreement, a liability shall be established for the amount of the proceeds. The investment mortgagebacked security account shall not be relieved of the collateral mortgagebacked security. Interest cost on these agreements shall be reported as an expense and not recorded net of interest income.

(4) Rollovers and extensions of reverse-repurchase agreements shall be accounted for based on the facts and circumstances at the time of the rollover or extension. When the rollover involves the identical security, the transaction shall continue to be accounted for as described in paragraph (b)(1) of this section.

(c) Dollar reverse-repurchase agreements. (1) A dollar reverserepurchase agreement is an agreement (contract) to sell a mortgage-backed security from an investment portfolio and subsequently repurchase a mortgage-backed security, which is of the same issuer but which is not the original mortgage-backed security, within a specified time and at a specified price. Fixed-coupon and yieldmaintenance dollar agreements are the most common agreements. In a fixedcoupon agreement, the seller and purchaser agree that delivery will be made with a mortgage-backed security having the same stated coupon interest rate as the security sold. In a yieldmaintenance agreement, the parties

agree that delivery will be made with a security that will provide the seller a yield that is specified in the agreement. During the term of the contract, the savings association transfers the security to the lender and the security is no longer registered in the savings association's name. The savings association receives no principal and interest payments on the security during the agreement's term. The security to be repurchased is typically on a "to be assigned" basis, meaning the pools of mortgages to secure a reacquired security have been formed but not specifically identified.

(2) For purposes of this statement of policy, under the fixed-coupon dollar reverse-repurchase agreement, the mortgage-backed security to be sold must be initially owned by the savings association and held in its investment portfolio for a minimum of 35 consecutive days prior to the initiation of the sell/buy contract. Securities which have been formed by the pooling of mortgage loans that have been held by the savings association for 35 days meet this 35-day holding-period criterion.

(3) Fixed-coupon dollar reverserepurchase agreements involving substantially the same mortgage-backed securities should be accounted for as collateralized borrowing arrangements (financings).

(4) Mortgage-backed securities are considered substantially the same only when all of the following criteria are

(i) The securities are collateralized by similar mortgages (e.g., single-family residential mortgages for single-family residential mortgages);

(ii) They are of the same type of fixedcoupon instrument (e.g., GNMA for GNMA, FHLMC for FHLMC, FNMA for FNMA);

(iii) The mortgages collateralizing the securities must be similar as to maturities (that is, expected remaining lives) resulting in approximately the same market yield;

(iv) The securities have identical coupon interest rates; and

(v) The aggregate principal amounts of mortgage-backed securities given up and mortgage-backed securities reacquired must be within the accepted "good delivery" standard for the type of mortgage-backed security involved.

(5) The accounting for fixed-coupon dollar reverse-repurchase agreements is the same as the accounting for reverserepurchase agreements. When funds are borrowed under this type of agreement, a liability shall be recorded for the amount of the proceeds. The investment mortgage-backed security account shall not be relieved of the collateral mortgage-backed security. Amortization of the original premium or accretion of the original discount and interest income of the original security shall continue to be recorded even if there is an exchange of fixed-coupon mortgage-backed securities.

(6) In conformance with paragraph (c)(4)(v) of this section, the aggregate principal amounts of the mortgagebacked securities sold and reacquired must be within the accepted delivery standards for the types of mortgagebacked security involved. If the principal amount of the securities repurchased in a fixed-coupon dollar reverse-repurchase transaction is greater than that of those originally sold, the difference shall be recorded in the investment account as though a separate acquisition of additional securities had occurred. If the principal amount is less, the investment account must be relieved of the proportionate share of mortgagebacked securities that have been sold, and gains or losses adjusted for the pro rata share of unamortized premium (or discount).

(7) To qualify as a financing for accounting purposes, the settlement term on the fixed-coupon dollar reverse-repurchase agreement shall not exceed twelve months from the initiation date

(original "sell" date).

(8) A fixed-coupon agreement that contains a right-of-substitution clause or that provides an option to the lender to deliver mortgage-backed securities priced to result in a significantly different yield shall be accounted for in the same manner as a yield-maintenance agreement (i.e., current recordation of gains and losses).

(9) If the elements comprising the substantially the same" criterion (set orth in paragraph (c)(4) of this section), e holding-period criterion (set forth in aragraph (c)(2) of this section), or the erm-of-agreement criterion (set forth in aragraph (c)(7) of this section) have not all been met, transactions shall be counted for as a sale and purchase of ortgage-backed securities rather than a financing. Thereafter, the position hall be marked to market as a peculative transaction in each accounting period until the securities are eacquired.

(10) The accounting for fixed-coupon dollar reverse-repurchase transactions entered into prior to December 31, 1984, shall be accounted for as specified in memoranda of the Senior Deputy Director for Supervision (Policy) as furnished from time to time. For example, a transaction entered into on November 30, 1984, with a thirteen-

month term would not be subject to the holding-period criterion, the "substantially the same" criteria (except that the securities must have identica1 coupon rates), or the length-of-time criterion for purposes of qualifying for financing accounting (through December 31, 1985), because the transaction was initiated prior to December 31, 1984. Transactions entered into on or after December 31, 1984, shall be accounted for as provided in this statement of policy.

(11) Yield-maintenance dollar reverse-

(11) Yield-maintenance dollar reverserepurchase agreements do not represent transactions involving substantially identical mortgage-backed securities and, therefore, must be accounted for as sales and purchases, regardless of when

initiated.

(d) Dollar reverse-repurchase agreements with rollovers or extensions. (1) A rollover or extension of a dollar reverse-repurchase agreement occurs when an association decides not to accept delivery of a fixed-coupon mortgage-backed security at the repurchase date but rather decides to "roll it forward" by means of a sell/buy transaction in which the position is offset and extended for another specified period of time. Typically, to the extent the market value of the fixedcoupon security has increased or decreased in value due to interest-rate fluctuations from the original sale date to the roll date, the association will pay or receive payment for such price fluctuations. The other characteristics of a dollar reverse-repurchase agreement which are present in its initial term (e.g., no receipt of principal and interest payments, securities not registered in the association's name) also are present in the "roll" periods.

(2) Once the roll period commences, the rolled fixed-coupon dollar reverserepurchase agreement shall continue to be accounted for as a financing, when the following conditions exist:

(i) Within twelve months from the date of the initial sell/buy transaction (as described in paragraph (c)(1) of this section), the savings association shall fund the security (this condition is not satisfied if the security is funded via a reverse-repurchase agreement), accept delivery, close out its position, and place in its investment portfolio the fixedcoupon mortgage-backed security. To qualify as being placed in the savings association's investment portfolio, the security shall be registered in the savings association's name. For future dellar reverse-repurchase transactions using these reacquired securities, in order for these transactions to be accounted for as financings, the security shall remain in the savings association's

investment portfolio for at least 35 consecutive days. These conditions are intended to demonstrate the savings association's ability to fund the purchase of the securities and intent to hold the securities for investment purposes.

(ii) At all times during the rollover or extension period(s), the savings association must be able to demonstrate the ability to fund its aggregate outstanding position of reverse-repurchase agreements and dollar reverse-repurchase agreements (i.e., the individual reverse-repurchase agreements must be aggregated to determine if this criterion has been satisfied). The "ability to fund" condition may be met if the savings association has

(A) sufficient liquidity,

(B) sufficient available borrowing capacity or

(C) sufficient open lines of credit to

fund all open positions.

(3) If the conditions of paragraphs (d)(2)(i) and (d)(2)(ii) of this section are not met, the transaction must be accounted for as a sale and purchase of mortgage-backed securities rather than as a financing at the beginning of the month the ability to fund has not been demonstrated or at the end of the twelve-month period, whichever comes first. Thereafter, the position must be marked to market in each accounting period until the mortgage-backed securities are reacquired.

(4) The rollover at maturity of a fixedcoupon dollar reverse-repurchase agreement into a yield-maintenance dollar reverse-repurchase agreement results in a new contract. The rollover into the yield-maintenance agreement shall be accounted for as a sale and purchase of securities and the position marked to market in each accounting period thereafter until the mortgagebacked securities are reacquired.

(5) The policy applies as of December 31, 1984, for fixed-coupon dollar reverserepurchase agreements which have been rolled and for rolls which occur after that date in order for them to be accounted for as in financing. (For example, assume a transaction was initiated on August 1, 1984, and had been rolled forward in 30-day rollover increments to January 1, 1985. The savings association, beginning on December 31, 1984, would have to demonstrate its ability to fund the delivery of the substantially identical securities. Additionally, the savings association would have to take delivery of the securities on or before December 31, 1985.)

(e) Rollover of forward commitment to purchase mortgage-backed securities "forward-commitment dollar rolls"). (1) A forward-commitment dollar roll is initiated when a savings association enters into a forward commitment to purchase mortgage-backed securities on a "to be announced" basis ("TBA") at a specified price on a specified settlement date. On or before the settlement date, the savings association decides to "roll" its position forward rather than accept delivery of the securities. The rollover is accomplished by the savings association "offsetting" its position and extending the commitment to purchase a TBA at a specified later date.

(2) These transactions are not initiated with mortgage-backed securities held in portfolio but rather with a forward commitment to purchase. No significant cash is exchanged at the initial settlement date. During the roll period, the securities are not registered in the savings association's name and the savings association does not receive principal and interest payments on the securities. In many cases the TBA securities have not been identified because the pools to secure them have not been formed but are to be created in the future. At each rollover date, the savings association pays or receives cash (similar to a margin call) from the broker for the change in market value of its position since the previous rollover settlement date. Interest costs due the broker may be netted against the margin call. This "net margin call" is the amount of cash which is exchanged during the rolling of the forward commitments. When these transactions are rolled, they are considered to be speculative in nature rather than the short-term financing, in addition to other forward commitments, are subject to the limitations specified in § 563.173 of this subchapter.

(3) As of December 31, 1984, open forward-commitment dollar rolls entered into on or before that date may be treated as financings unless modified during the life of the contract, in which case the provisions of § 563.173(d) of this subchapter would apply and profit or loss recognized by the savings association at the time of modification. Any extension of these transactions beyond the earlier of this settlement date or March 31, 1985, any forwardcommitment dollar rolls entered into after December 31, 1984, and any open forward-commitment dollar-roll transactions with a settlement date beyond March 31, 1985, shall be marked to market as of the earlier of each roll date or the date of filing reports with the Office after March 31, 1985. Application

of mark-to-market accounting to those forward-commitment dollar-roll positions established prior to December 31, 1984, and expiring prior to March 31, 1985, is optional but encouraged.

#### § 571.17 Payment in gold or its equivalent.

Section 463(a) of 31 U.S.C. provides, in part, that "[every] provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount of money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation [incurred after June 5, 1933]." The Office believes that section remains in effect even though Pub. L. 93-373 invalidated laws prohibiting persons from purchasing, holding, selling, or otherwise dealing with gold, effective December 31, 1974. The Office interprets 31 U.S.C. as prohibiting savings associations from agreeing to pay any part of the principal of, or interest or dividends earned on, their savings accounts in gold (including gold coin), gold-related instruments or securities, or an amount of money determined with reference to gold: Provided, That savings associations may pay interest or dividends in gold coins minted and issued by the United States Treasury.

### § 571.18 Accounting for troubled debt restructuring.

(a) The purpose of this section is to offer to the management of savings associations the Office's views on troubled debt restructuring. This section is intended as guidance. It is not prescriptive, nor does it have the force

and effect of law.

(b) All savings associations should use the accounting treatment for troubled debt restructuring ("TDR") described in this section when preparing all financial reports for filing with the Office. All savings associations may use TDR for any loans, in compliance with Statement No. 5 and Statement No. 15 of the Financial Accounting Standards Board ("FASB-5" and "FASB-15"). If an association chooses to use TDR, it should account for the transaction as specified in FASB-5 and FASB-15. Allowances for losses on those loans should be determined as set forth in the AICPA Industry Guide for Savings and Loan Associations. This statement of policy sets forth the policy and general criteria for determining what may be included in TDR, when a savings association must report a TDR, treatment of any transfer of assets as part of a TDR, including treatment of

repossessions in substance, and how TDRs should be reported. This statement also sets forth the criteria under FASB-5 for when a loss must be recognized because an asset has been impaired, regardless of TDR, and when loss contingencies must be disclosed.

(c) The accounting standards for TDR are set forth in FASB Statement No. 15, "Accounting by Debtors and Creditors for Troubled Debt Restructurings,' which is summarized in this paragraph (c) and the rest of this section. Further specific information may be found by referring to FASB-15. A TDR is a restructuring in which a creditor, such as a savings association, for economic or legal reasons related to a borrower's financial difficulties, grants a concession to the borrower that it would not otherwise consider. Extending or renewing a loan with no change in principal at a stated interest rate equal to the current interest rate for new loans at a similar level of risk is not considered a restructured loan and should not be reported as such. A restructuring may involve a transfer of assets from the borrower to the thrift in full or partial satisfaction of the loan, a modification of the loan's terms, or both of the above. A restructuring may also involve the substitution or addition of a new debtor for the original borrower.

(d) FASB Statement No. 5, "Accounting for Contingencies," also plays a significant role in the reporting of TDRs. FASB-5 governs when certain losses must be recognized because a loss contingency is both probable and estimable and an asset has therefore been impaired or a liability has been incurred. Further specific information may be found by referring to FASB-5.

(e) TDR may not be used to avoid recognizing losses that FASB-5 requires to be accrued. Estimated losses must be accrued by a charge to income if two conditions are met. First, available information indicates that it is probable that an asset had been impaired or a liability incurred at the date of the financial statements. Second, the amount of the loss must be reasonably estimable. If both of these conditions are met for a loan, the savings association must, both before and after restructuring, establish loss allowances for the difference between the carrying value of the loan and its net realizable value as determined in accordance with the AICPA Industry Guide for Savings and Loan Associations. The FASB-15 criteria are then applied to the net realizable value of the loan.

(f) FASB-5 also requires adequate disclosure of loss contingencies not meeting both of the above criteria under certain circumstances. Disclosure is required, for example, where there is at least a reasonable possibility that a loss, or an additional loss, may have been incurred or where an asset has probably been impaired but the amount of loss cannot reasonably be estimated. Such disclosure should include a description of the loss or excess or additional loss contingency and either a range of possible loss or a statement that no estimate of the loss can be made.

(g) Under paragraph 6 of FASB-15, the date of consummation of the restructuring is the time of the restructuring. A TDR exists as soon as there is agreement between the savings association and the borrower(s) (either prospective or existing) to consummate the restructuring. Thus, a TDR would clearly exist when a formal letter of intent or mutual agreement is signed. It would also be presumed to exist, however, if the senior management of both the savings association and the borrower reach an oral agreement memorialized in written documentation. such as a memorandum to the files, setting forth the terms of the TDR. Savings associations that report such informal or incomplete restructurings assume the burden of formally completing the transaction, however. Failure to do so may result in reconsideration of any conclusions drawn as a result of the anticipated restructuring and may require refilings of financial statements. Normally a TDR should be finalized within six months from the start of negotiations. The savings association's history in finalizing expected restructurings will be reviewed by the Office's examiners. If a savings association's reported expected restructurings frequently do not result in formal consummation within a reasonable time, the examiner may decide to permit only formally completed TDRs to be reported as such.

(h) A restructuring may involve the transfer of assets from the borrower to the creditor savings association in full or partial satisfaction of the loan. The proper treatment of assets received in partial satisfaction of the loan is set forth in paragraph (j) of this section. Assets transferred may include, but are not limited to, receivables from third parties, real estate, or an equity interest in the borrower. Pursuant to paragraph 28 of FASB-15, such assets must be accounted for at their fair value at the time of the restructuring. Paragraph 13 of FASB-15 defines the "fair value of the assets transferred" as the amount the borrower could reasonably expect to receive for them in a current sale between a willing buyer and a willing

seller, i.e., other than a forced or liquidation sale. Paragraph 13 provides that market value shall be used if an active market exists. If no market price is available for the asset or similar assets that could be used in estimating fair market value, a forecast of expected cash flows from the asset, discounted at a rate commensurate with any risk involved, may be used to arrive at fair value.

(1) Such fair value accounting is required by FASB-15 when collateral is repossessed by the savings association. This fair value accounting treatment cannot be avoided merely by delaying formal repossession. Under paragraph 34 of FASB-15, a repossession in substance must be accounted for at fair value in accordance with paragraph 28. Paragraph 84 of FASB-15 requires such accounting "if, for example, the creditor obtains control or ownership (or substantially all of the benefits and risks incident to ownership) of one or more assets of the debtor and the debtor is wholly or partially relieved of the obligations under the debt." The Office will use the guidelines established by the Securities and Exchange Commission ("SEC") as set forth in its Interpretive Release Number 33-6679 to determine when a repossession in substance has occurred. Under these guidelines, a repossession in substance will be deemed to have occurred when:

(i) The borrower has little or no equity in the collateral, considering the current fair value of the collateral; and

(ii) The creditor can only expect proceeds for the repayment of the loan to come from the operation or sale of the collateral; and

(iii) The borrower has either-

 (A) Formally or effectively abandoned control of the collateral to the creditor;
 or

(B) Retained control of the collateral but, because of its current financial condition or economic prospects, it is unlikely that the borrower will be able to rebuild equity in the collateral or otherwise repay the loan in the foreseeable future.

These determinations will be made on a case-by-case basis. A number of factors will be considered in determining whether a repossession in substance has occurred because it is unlikely that the borrower can rebuild equity in the "foreseeable future." Among these are the savings association's experience in previous recessionary cycles, the local market experience with real estate cycles, the borrower's financial condition and economic prospects, and the extent of the borrower's involvement in pursuing a reasonable workout

agreement. As the SEC noted in its Interpretive Rule:

[O]ngoing debtor commitment is a factor in assessing whether collateral has in substance been repossessed \* \* \* [R]epossession accounting may not be necessary when the debtor continues good faith efforts toward successful operation of the collateral and eventual repayment of the loan; provided, however, that the creditor can demonstrate a reasonable basis for concluding that the loan will be ultimately collectible.

(2) Assets received in full satisfaction of a loan must be recorded at their fair value. Any excess of the carrying value of the loan over the fair value of assets received in satisfaction of the loan must be recognized as a loss. The carrying value of the loan is the loan balance, adjusted for any unamortized premium or discount, less any allowance provided or any amount previously charged off, plus recorded accrued interest.

(i) TDR may involve a modification of the terms of the loan. This modification may include, but is not limited to, a reduction in the stated interest rate, an extension of maturity at a favorable interest rate, a reduction in the face amount of the debt (principal), a reduction in accrued interest, or a combination of the above. The proper treatment of a TDR involving a combination of a transfer of assets from the borrower to the savings association in partial satisfaction of the loan and a modification of the terms of the loan is set forth in paragraph (j) of this section. Both before and after a TDR is implemented, an adequate allowance for loss must be provided in accordance with FASB-5. Under GAAP, this allowance must be based on net realizable value to determine the appropriate carrying value of the loan being restructured.

(1) If the total expected future cash receipts (including both principal and interest) reasonably expected to be collected under the modified repayment terms are less than the carrying value of the loan on the savings association's books, after any necessary FASB-5 adjustment, then a loss on restructuring must be recognized to the extent of that deficiency. Under these circumstances, no interest income will be recognized over the life of the restructured loan.

(2) If the total expected future cash receipts are equal to or exceed the carrying value of the loan, after any necessary FASB-5 adjustment, no loss on restructuring need be reported. Interest income will be recognized over the life of the loan to the extent that future receipts exceed the carrying value of the loan. Savings associations should

recognize this income using an effective interest rate that will yield a constant rate of interest over the remaining life of the loan.

(3) Some restructurings may involve indeterminate future cash receipts. To the extent that the minimum future cash receipts are less than the carrying value of the loan, the savings association must recognize a loss. This loss must be recognized under paragraph 32 of FASB-15, unless under the modified terms the contingent future cash receipts needed to make the total future cash receipts under the modified terms equal to the carrying value of the loan, after any necessary FASB-5 adjustment, are both probable and are reasonably estimable.

(i) Some TDRs may involve both a transfer of assets from the borrower to the savings association in partial satisfaction of the loan and a modification of the terms of the remaining loan. In these circumstances, the restructuring must be accounted for by a two-stage process under paragraph 33 of FASB-15. First, the carrying value of the loan is reduced by the fair value of the property received, as calculated pursuant to paragraph 13 of FASB-15. Second, the total amount of the expected future cash receipts is compared to the remaining carrying value of the loan. Any loss recognized is limited to the excess of the remaining carrying value of the loan over such total future cash receipts. If the total expected cash receipts exceed the remaining recorded amount of the loan, no loss need be recognized, and any future interest income should be recognized at a constant effective interest rate over the life of the loan.

(k) Some TDRs may involve the substitution or addition of a new debtor for the original borrower. Pursuant to paragraph 42 of FASB-15, such a restructuring should be accounted for according to its substance. If under the restructuring the substitute or additional debtor controls, is controlled by, or is under common control with the original borrower, or performs the custodial function of collecting certain of the original borrower's funds, FASB-15 provides that the restructuring should be accounted for as a modification of terms. If the substitute or additional debtor does not have such a control or custodial relationship with the original borrower, the restructuring should be accounted for as a new loan in full or partial satisfaction of the original borrower's loan. The new loan should be recorded at its fair value.

(1) As provided in § 563.234 of this subchapter, restructured loans are to be reported in all monthly and quarterly reports to the Office. In these reports

and annual audited reports filed with the Office, all disclosures and information required by FASB-5 and FASB-15 should be provided. The carrying value of an asset received in full or partial satisfaction of the loan is not reportable as a restructured loan.

(m) Examiners will continue to monitor savings associations' loan portfolios, including restructured loans. Loans will not automatically be classified merely because they have been restructured. Conversely, loans will not be exempt from classification merely because they have been restructured. Where appropriate under the criteria set forth in § 563.160, a restructured loan may be classified.

## § 571.19 Investment portfolio policy and accounting guidelines.

(a) General. This Statement of Policy sets forth the Office's position on the need for an association to document prudent investment portfolio policy and strategies. It places with the association's board of directors the responsibility for the establishment of and ongoing monitoring of management's compliance with the association's investment policy and strategies. The Statement of Policy reiterates the requirement that securities1 be recorded in accordance with generally accepted accounting principles ("GAAP") and requires the management of an association to support via documentation the appropriate classification 2 of and accounting for securities in accordance with generally accepted accounting principles. This documentation is then required to be reviewed by the association's auditors for consistency with promulgated GAAP. From a regulatory standpoint, there is the need for an association to engage in safe and sound investment of its resources.

(b) Investment policy and strategies—
(1) Content of policy and strategies. An association must document its overall investment policy for the association as a whole and must also document its investment strategies for each different type of security portfolio. The

investment policy and strategies must distinguish between those securities activities undertaken for investment, for sale, and for trading. Generally, such activities may be differentiated based upon an association's desire to earn an interest yield (held for investment), to realize a holding gain from assets held for indefinite periods of time (held for sale), or to earn a dealer's spread between the bid and asked prices (held for trading).3 The association's policy should state the overall investment course reflecting, inter alia, the association's business plan, capital adequacy, its plans for growth, and the current economic environment, including a range of reasonably foreseeable economic environments.4 The investment strategies should reflect the more specific plans to carry out the investment policy by addressing the type, nature, dollar amount and anticipated maturity of each type of security that will be used to achieve the strategies. Management's strategies should include planned management responses to rising and falling interest rate environments and to other external factors that past history and current events support as being reasonable. The strategies should address the range of external factors for which the strategies would continue to be valid and should also justify the boundary or boundaries beyond which the probabilities of specific events occurring are remote based on past history and current events. The range with respect to interest rates, for example, would thus have an upper limit and a lower limit.

<sup>1 &</sup>quot;Securities", as used throughout this Statement of Policy, refers generically to investment securities, high yield corporate debt securities, loans, mortgage-backed securities, and derivative securities.

<sup>\* &</sup>quot;Classification", as used throughout this
Statement of Policy, refers to the balance sheet
classification of securities and does not refer to the
classification of assets for purposes of loss
allowance analysis under 12 CFR 563.160,
"Classification of Certain Assets". Furthermore,
"classification" as used throughout this statement of
policy, does not refer to a classification of assets
that falls within the arbitration process mandated
by the Competitive Equality Banking Act of 1987.

<sup>&</sup>lt;sup>3</sup> These definitions are drawn from a letter, dated December 21, 1988, to the former Federal Home Loan Bank Board from the staff of the Financial Accounting Standards Board ("FASB"). See 54 FR 11736 (March 22, 1989) for the text of the letter.

<sup>4</sup> In assessing the "range of reasonably foreseeable economic environments" an association should consider, inter alia, the magnitude of fluctuations of interest rates in recent years, significant economic events and conditions on the local, regional, and national level that may affect the decision of the association to engage in securities transactions, and the experience of the management of the association in dealing with significant economic events of the past and the ability to apply that experience to future events. Given the need to demonstrate a positive intent to hold to maturity to justify the use of amortized cost for securities, the range should include external market events that history and current events support as having a better than remote chance of occurrence. The range utilized by the association need not include remotely possible interest rates or economic conditions and events, but should address the widest range within which the association would expect to conduct its operations over the lives of the assets held. When conditions move to the extremes of potentially possible conditions, an association generally should re-evaluate its financial position and evaluate the need to reposition itself (assets and liabilities) for the significant changes encountered.

For events within the reasonably foreseeable range, investment strategies for securities that are accounted for as held for investment should proscribe sales of investment securities. Accordingly, sales of investment securities within the range should be extremely rare 5 and the reasons for the sales must be documented adequately and on a timely basis. If management believes that an event has occurred that is outside the limits of the reasonably foreseeable range and is thereby motivated to sell such securities, management must document its belief that such a remotely possible event has occurred in order to justify the continued use of amortized cost accounting. Furthermore, changes in policy and strategies for the association as a whole or for a particular group of assets, e.g., from loans held for sale to loans held for investment or vice versa, shall be documented and based upon sound rationale. The investment policy and strategies must, at a minimum, address the following:

(i) The investment policy and strategies in rising and falling interest rate environments within a reasonably foreseeable range of interest rates;

 (ii) The association's intent to purchase and originate securities for investment, for sale, or for trading;

(iii) The liquidity considerations of the association;

(iv) The association's desired rate of return on investments;

(v) The association's desired degree of interest rate risk;

(vi) The association's desired asset/

liability position;
(vii) The use of hedging techniques, if
any:

(viil) The types of products to be originated and/or purchased;

(ix) The intent of the association to build a mortgage-servicing portfolio;

(x) The association's plan for reinvestment of proceeds from sales; and

(ix) The characteristics of the investments originated or purchased.

(2) Board of directors' review and approval. The investment policy must be reviewed and approved periodically (but no less than annually) by the association's board of directors. Furthermore, the association's investment strategies and securities activities must be approved no less than quarterly by the association's board of

directors or an investment committee thereof to ensure that securities activities are consistent with the investment policy and strategies of the association. Securities activities may be approved based on a summary report of transactions.

(3) Portfolio Decisions. An association shall identify and determine whether securities are intended to be held for investment, for sale, or for trading at the time the securities are committed to be purchased or originated. Documentation of decisions may be made by exception when appropriate, e.g., "all adjustable rate mortgages are purchased or originated for the investment portfolio". Any exceptions to a strategy require identification and documentation at the commitment date.

(c) Safety and soundness. Securities activities must be conducted in a safe and sound manner and by competent personnel. Investment decisions and securities activities shall be carried out consistent with the investment policy and strategies that appropriately consider adequate liquidity, protection from interest rate risk, desired rate of return, asset/liability position, capital adequacy, and management capabilities of an association. In addition to understanding and approving the association's investment policy and strategies, the association's board of directors or an investment committee of the board of directors (in conjunction with the full board) has the fiduciary duty to oversee the establishment of strong internal controls, ensure that management and their investment consultants, if any, are reputable and capable, and to ensure that securities activities are consistent with the investment policy and strategies of the association's and are classified and accounted for in accordance with GAAP.

(d) Generally Accepted Accounting Principles. (1) Accounting guidance for securities including investment securities, high yield corporate debt securities, loans and mortgage-backed securities and their derivatives exists in various degrees of detail in the FASB Statement of Financial Accounting Standards ("SFAS") No. 12, "Accounting for Certain Marketable Securities", SFAS No. 65, "Accounting for Certain Mortgage Banking Activities", SFAS No. 80, "Accounting for Futures Contracts", SFAS No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases", the September 20, 1988, and December 21, 1988, letters from the FASB staff to the former Federal Home Loan Bank Board ("Board"), the

American Institute of Certified Public Accountants' ("AICPA") Audit and Accounting Guide for Savings and Loan Associations, the AICPA's Industry Audit Guide for Audits of Banks, the April 14, 1989, letter from the Chief Accountant of the Securities and Exchange Commission to the Chairman of the Accounting Standards Executive Committee of the AICPA, and various consensuses of the FASB's Emerging Issues Task Force. As stated in the FASB staff's letters to the Board, GAAP's emphasis on the intent to hold to maturity as a premise for cost accounting is well founded within existing GAAP literature promulgated by the FASB. Further, GAAP currently requires that investments held for sale are to be recorded at the lower of cost or market and investments held for trading purposes are to be valued at market.

(2) An association's investment activities shall be classified and accounted for in accordance with GAAP. Critical to the proper classification of and accounting for securities as investments is the intent and ability of an association to hold the securities until maturity. A positive intent to hold to maturity, not just a current lack of intent to dispose, is necessary for securities acquired to be considered held for investment purposes. Those associations whose strategies include active asset management would be expected to account for those securities on a basis other than amortized cost.

(3) Management is responsible for analyzing the types, extent and timing of securities activity to ascertain the appropriate classification of and accounting for securities transactions in accordance with current GAAP literature. In supporting management's intent and ability to hold securities until maturity, management must document how its sale, purchase, and origination activities support the association's intent and ability to hold securities until maturity. Independent accountants must obtain and evaluate management's documentation and analyses and document their conclusions regarding management's compliance with GAAP. Additionally, certain transactions carry a presumption of trading; see Section I, "Trading in the Investment Portfolio" to the Appendix to the Federal Financial Institutions Examination Council policy statement entitled "Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices" included as an Appendix to this Statement of Policy.

(i) Intent. (A) Sales intent. The necessity of analyzing sales activity is

Within the range of reasonably foreseeable events, the Office would consider the number of occurrences of sales of securities held for investment to be essentially non-existent and the dollar amount of such sales, if any, would be negligible.

considered to be minimal since sales activity will be extremely rare for securities held for investment purposes. This does not imply that an association may never sell securities from the investment portfolio. Significant events that were not reasonably foreseen when a security was acquired or originated may affect the association's intent and/ or ability to hold a security until maturity, although such instances should be extremely rare. Where management's strategies proscribe the sales of securities due to changes in external factors that are reasonably foreseeable, a positive intent to hold until maturity will be presumed to exist. Past and subsequent management actions must bear out the presumption. Accordingly, the reasons for sales of securities will need to be determined. Among the factors to be considered in analyzing sales activity include, but are not limited to, analyses of:

(1) Whether the reason for the sale is consistent with the investment strategy;

(2) The number of sales transactions at gains and at losses during the

reporting period;

(3) The relative volume of gross gains and gross losses on sale of securities as percentages of net income and equity;

(4) The net gain or loss from sales as a percentage of income and equity:

(5) The dollar amount of securities sold compared with outstanding balances throughout the reporting

(6) The rapidity of turnover, including consideration of the average number of days securities are owned prior to sale;

(7) A trend indicating that sales of securities transpire largely when gains are recognized ("gains trading" or "par

capping");

- (B) Originations and purchases intent. The types and extent of originations and purchases shall also be analyzed for intent to hold until maturity. Among the factors to be considered in analyzing origination and purchase activity include, but are not limited to, analyses
- (1) The nature of securities (type, term, duration, yield, etc.) originated and/or purchases;

(2) The means of financing the acquisition;

(3) Trends indicating that market value is consistently below cost at the time of origination and/or purchase.

(C) Other intent. Other securities activities that shall be considered when reviewing an association's intent to hold securities until maturity include, but are not limited to:

(1) The period of time between sales and purchases of securities;

(2) The method by which securities are financed. The consistent funding of securities via very short-term liabilities that have not been extended in duration via interest rate swaps, options, futures, etc., may indicate that the intent to hold the securities is short-term or that the ability to hold is in doubt; and

(3) The reasons for an association's securitization of loans. There are numerous reasons to securitize loans, one being the ability to raise debt at lower cost when collateralized by mortgage-backed securities. Securitization does not automatically portend sale or trade accounting; however, the extent of securitization should be considered in light of an association's investment policy and strategies, activity and liquidity needs.

(ii) Ability to hold. In supporting and analyzing an association's ability to hold securities until maturity, documentation shall include, but is not limited to, analyses of the following:

(A) The availability of funding;

(B) The ability to meet margin calls and overcollateralization requirements;

- (C) The ability of the association to fund commitments to purchase or originate securities in light of regulatory limitations (or the non-compliance therewith), e.g., regulatory capital requirements, liquidity, loans-to-one borrower limitations, equity risk limitations, growth limitations, investment authorities, etc. In determining whether an association's pair-off activity is considered to be investment activity (instead of trading activity), regulatory limitations shall be analyzed based upon gross commitments to purchase or originate securities adjusted for anticipated prepayments through the period of delivery.
- (e) Effective date. The requirements for the establishment and documentation of investment policies. and strategies, management and its auditors requirements to support via documentation the proper classification of and accounting for its securities activities in accordance with GAAP and board of directors' reviews are effective January I, 1990. As authoritative GAAP literature has been in existence, the Office would expect savings associations to properly apply the appropriate accounting principles in financial statements filed with the Office and the Office will continue its practice of challenging the reporting of securities activities not properly accounted for in accordance with GAAP.

### § 571.20 Payment for appraisals.

(a) Payment by the savings association. Paragraph (b) of § 563.170 of this subchapter provides, among other things, that if appraisals of real estate securing a savings association's loans are obtained as part of an examination by the Office, the cost of such appraisals shall promptly be paid by the savings association direct to the appraiser or appraisers. Failure to make payment for appraisals as provided in § 563.170 of this subchapter within 60 days after receipt of a statement of the cost of the appraisals approved by the District Director will be considered a violation of a regulation to which the savings association is subject within the meaning of section 5(d) of the Home Owners' Loan Act of 1933, as amended, and section 8 of the Federal Deposit Insurance Act, as amended.

(b) Payment by the Office. In any instance where the cost of appraisals has not been paid as provided in paragraph (a) of this section, the Office will make such payment to the appraiser or appraisers and, in turn, charge such cost to the savings association as part of the cost of examination. Payment by the Office will not constitute correction by the savings association of the violation

of the regulation.

### § 571.21 Separate corporate existence of a service corporation.

- (a) General. If a savings association and its service corporation fail to maintain their separate corporate existence, a court, for equitable reasons in an extreme situation, might hold the savings association liable for the obligations of its service corporation. To insure judicial recognition of the separate corporate existence of service corporations, the savings association and its service corporations should operate so that:
- (1) Their respective business transactions, accounts, and records are not intermingled,
- (2) Each observes the formalities of their separate corporate procedures,
- (3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character,
- (4) Each is held out to the public as a separate enterprise, and
- (5) The savings association does not dominate the service corporation to the extent that the latter is treated as a mere department of the former.

In recommending such operating practices, the Office is not suggesting that a failure to follow one or more or all of such practices by a savings association and its service corporation

should cause a court to ignore the separate corporate existence of the

service corporation.

(b) Operation of service corporations. Section 563.37(a) of this subchapter requires that a savings association and its service corporations be operated in a manner which demonstrates their separate corporate existence. Failure to assure corporate separateness could result in serious risk to the savings association. In monitoring compliance with \$ 563.37(a) of this subchapter, the Office will look for attributes of corporate separateness such as those contained in paragraph (a) of this section.

### § 571.22 Most Favored Lender status.

(a) Under section 4(g) of the Act savings associations are authorized to charge on any loan an interest rate equal to the greater of one percentage point above the discount rate on ninety day commercial paper in the association's Federal Reserve district or "the rate allowed by the laws of the State \* \* \* where such association is located" whenever either of these rates exceeds the rate the association is currently permitted. The stated purpose of this provision is to provide savings associations with competitive equality with national banks. In view of this Congressional purpose and the judicial construction of the phrase "rate allowed by the laws of the State" in the context of the National Bank Act, it is the opinion of the Office that section 4 allows savings associations to charge interest at a rate not to exceed the greater of either one percent above the Federal Reserve ninety-day discount rate or the rate allowed to the most favored lender on the particular class of loans under State law whenever the greater of either of these rates exceeds the rate the association is permitted to charge by State law.

(b) Savings associations may only charge the preferential rates reserved for most favored lenders when they are making the same type of loans as the most favored lender. Accordingly, savings associations could not charge the maximum loan rates permitted for small loan companies unless that loan met the substantive state law requirements as to loan term amount, use of proceeds, identity of borrower, etc. Consumer protections specifically required in such loans when made by the most favored lender would also be considered substantive and must be included in loans made by savings associations which desire to use most-

(c) Federal savings associations would not be required to submit to state

favored-lender rates.

most-favored-lender restrictions that are primarily procedural or regulatory in nature. Such restrictions would include licensing, bonding, and reporting to State authorities. The degree to which state-chartered savings associations must comply with such restrictions will be determined by their State supervisors.

#### § 571.23 Regulatory capital.

(a) The term "regulatory capital" is defined in § 567.1 of this subchapter to mean the sum of equity capital as determined in accordance with generally accepted accounting principles, definitional capital, certain other components of capital as the Office determines consistent with its risk analysis conventions, and risk analysis reporting forbearances. To the extent regulatory capital includes reserves (except specific or valuation reserves), the rules set forth in paragraphs (b) and (c) of this § 571.23 shall apply.

(b) Specific loss reserves required by the California Savings and Loan Commissioner under section 7255 of the California Savings and Loan Association Law are not specific reserves within the meaning of the foregoing exception clause unless established in respect of loans whose outstanding balance is in excess of the appraised value of the security property as determined by the Commissioner.

(c) Temporary designation of a portion of earned surplus or undivided profits as a specific loss reserve, and subsequent restoration to earned surplus or undivided profits, shall not be deemed to constitute a previous allocation to another regulatory capital account within the meaning of part 567 of this chapter.

## § 571.24 Guidelines relating to nondiscrimination in lending.

(a) General. Fair housing and equal opportunity in home financing is a policy of the United States established by Federal statutes and Presidential orders and proclamations. In furtherance of the Federal civil rights laws and the economical home financing purposes of the statutes administered by the Office, the Office has adopted, in parts 528 and 529 of this Chapter, nondiscrimination regulations that, among other things, prohibit arbitrary refusals to consider loan applications on the basis of the age or location of a dwelling, and prohibit discrimination based on race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the person has the capacity to contract), or national

origin in fixing the amount, interest rate, duration, application procedures, collection or enforcement procedures, or other terms or conditions of housing related loans. Such discrimination is also prohibited in the purchase of loans and securities. This section provides supplementary guidelines to aid savings associations in developing and implementing nondiscriminatory lending policies. Each savings association should reexamine its underwriting standards at least annually in order to ensure equal opportunity.

(b) Loan underwriting standards. The basic purpose of the Office's nondiscrimination regulations is to require that every applicant be given an equal opportunity to obtain a loan. Each loan applicant's creditworthiness should be evaluated on an individual basis without reference to presumed characteristics of a group. The use of lending standards which have no economic basis and which are discriminatory in effect is a violation of law even in the absence of an actual intent to discriminate. However, a standard which has a discriminatory effect is not necessarily improper if its use achieves a genuine business need which cannot be achieved by means which are not discriminatory in effect or less discriminatory in effect.

(c) Discriminatory practices—(1) Discrimination on the basis of sex or marital status. The Civil Rights Act of 1968 and the National Housing Act prohibit discrimination in lending on the basis of sex. The Equal Credit Opportunity Act, in addition to this prohibition, forbids discrimination on the basis of marital status. Refusing to lend to, requiring higher standards of creditworthiness of, or imposing different requirements on, members of one sex or individuals of one marital status, is discrimination based on sex or marital status. Loan underwriting decisions must be based on an applicant's credit history and present and reasonably foreseeable economic prospects, rather than on the basis of assumptions regarding comparative differences in creditworthiness between married and unmarried individuals, or between men and women.

(2) Discrimination on the basis of language. Requiring fluency in the English language as a prerequisite for obtaining a loan may be a discriminatory practice based on

national origin.

(3) Income of husbands and wives. A practice of discounting all or part of either spouse's income where spouses apply jointly is a violation of section 527 of the National Housing Act. As with

other income, when spouses apply jointly for a loan, the determination as to whether a spouse's income qualifies for credit purposes should depend upon a reasonable evaluation of his or her past, present, and reasonably foreseeable economic circumstances. Information relating to child-bearing intentions of a couple or an individual

may not be requested.

(4) Supplementary income. Lending standards which consider as effective only the non-overtime income of the primary wage-earner may result in discrimination because they do not take account of variations in employment patterns among individuals and families. The Office favors loan underwriting which reasonably evaluates the credit worthiness of each applicant based on a realistic appraisal of his or her own past, present, and foreseeable economic circumstances. The determination as to whether primary income or additional income qualifies as effective for credit purposes should depend upon whether such income may reasonably be expected to continue through the early period of the mortgage risk. Automatically discounting other income from bonuses, overtime, or part-time employment, will cause some applicants to be denied financing without a realistic analysis of their credit worthiness. Since statistics show that minority group members and low- and moderate-income families rely more often on such supplemental income, the practice may be racially discriminatory in effect, as well as artificially restrictive of opportunities for home financing.

(5) Applicant's prior history. Loan decisions should be based upon a realistic evaluation of all pertinent factors respecting an individual's creditworthiness, without giving undue weight to any one factor. The savings association should, among other things,

take into consideration that:

(i) In some instances, past credit difficulties may have resulted from discriminatory practices:

discriminatory practices;
(ii) A policy favoring applicants who previously owned homes may perpetuate prior discrimination;

(iii) A current, stable earnings record may be the most reliable indicator of credit-worthiness, and entitled to more weight than factors such as educational level attained;

(iv) Job or residential changes may indicate upward mobility; and

(v) Preferring applicants who have done business with the lender can perpetuate previous discriminatory policies.

(6) Income level or racial composition of area. Refusing to lend or lending on

less favorable terms in particular areas because of their racial composition is unlawful. Refusing to lend, or offering less favorable terms (such as interest rate, downpayment, or maturity) to applicants because of the income level in an area can discriminate against minority group persons.

(7) Age and location factors. Sections 528.2, 528.2a, and 528.3 of this chapter prohibit loan denials based upon the age or location of a dwelling. These restrictions are intended to prohibit use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Loan decisions should be based on the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan. Specific factors which may negatively affect its short-range future value (up to 3-5 years) should be clearly documented. Factors which in some cases may cause the market value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not affect the market value of a property because of rehabilitation programs or affirmative lending programs, or because the cause of abandonment is unrelated to high risk. Proper underwriting considerations include the condition and utility of the improvements, and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults. However, arbitrary decisions based on age or location are prohibited, since many older, soundly constructed homes provide housing opportunities which may be precluded by an arbitrary lending policy.

(8) Fair Housing Act (Title VIII, Civil Rights Act of 1968, as amended). Savings associations, must comply with all regulations promulgated by the Department of Housing and Urban Development to implement the Fair Housing Act, found at 24 CFR 100 et seq., except that they shall use the Equal Housing Lender logo and poster prescribed by Office regulations at 12 CFR 528.4 and 528.5 rather than the Equal Housing Opportunity logo and poster required by 24 CFR Parts 109 and

(d) Marketing practices. Savings associations should review their advertising and marketing practices to ensure that their services are available without discrimination to the community they serve. Discrimination in lending is not limited to loan decisions and underwriting standards; a savings association does not meet its obligations to the community or implement its equal lending responsibility if its marketing practices and business relationships with developers and real estate brokers improperly restrict its clientele to segments of the community. A review of marketing practices could begin with an examination of an association's loan portfolio and applications to ascertain whether, in view of the demographic characteristics and credit demands of the community in which the institution is located, it is adequately serving the community on a nondiscriminatory basis. The Office will systematically review marketing practices where evidence of discrimination in lending is discovered.

### § 571.25 Accepting pooled accounts.

A savings association may not pool or participate in pooling funds, or solicit, or promote peoled accounts. However, a savings association is authorized to accept pooled funds from existing or potential accountholders who have pooled their funds in order to meet any prescribed minimum amount under this Part or to aggregate \$100,000 or more.

### § 571.26 Classification of certain assets.

This statement of policy provides guidance in the classification of assets pursuant to § 563.160 of this subchapter. Assets subject to this classification requirement may fall within more than one category, and a portion of an asset may remain unclassified. Reserves established by a savings association for such assets must be based on an appraisal made in accordance with Office appraisal standards and should take into consideration the availability of compensation by private mortgage insurance when the probability of full insurance payment is substantial.

(a) Substandard. An asset classified Substandard must have a well-defined weakness or weaknesses. A Substandard asset is an asset inadequately protected by the current regulatory capital and paying capacity of the obligor or pledged collateral, if any. It is characterized by the distinct possibility that the savings association will sustain some loss if the deficiencies are not corrected. Weaknesses are to be based upon objective evidence. The possibility that liquidation would not be

timely requires a Substandard
classification even if there is little
likelihood of total loss. If the
deficiencies are not corrected, the
savings association may sustain some
loss. Assets classified Substandard may
exhibit one or more of the following
characteristics:

 Collateral which is not subject to adequate inspection and verification;

(2) The primary source of repayment is gone and the lending savings association is relying upon the secondary source;

(3) A loss does not seem likely, but sufficient problems have arisen to cause the savings association to go to abnormal lengths to protect its position in order to maintain a high probability of repayment;

(4) Obligors are unable to generate enough cash flow for debt reduction;

(5) Deterioration in collateral;

(6) Flaws in documentation, leaving the lending savings association in a subordinated or unsecured position;

(7) With regard to assets secured by real estate, the appraisal does not conform with Office appraisal standards, or the assumptions underlying the appraisal are demonstrably incorrect;

(8) Office examiners may also consider the following in determining whether a Substandard classification is

appropriate:

(i) Restructuring of loans regarding payment schedule or term, collateral, or in any other manner adverse to the savings association;

(ii) Deterioration in the borrower's affairs sufficient to cause the savings association to look to the sale of collateral for repayment;

(iii) Loans to unprofitable or under-

capitalized businesses;

(iv) Special problems arising from conditions of a given industry; or

(v) Significant deterioration in market conditions.

It is incumbent upon the examiner to avoid classification of sound assets. The presence of one of these factors does not mandate that the asset be classified Substandard if the examiner does not believe that the presence of that factor indicates a well-defined weakness that jeopardizes the timely liquidation of the asset, or realization on the collateral, at the asset's book value.

(b) Doubtful. (1) An asset classified Doubtful would exhibit discernible loss potential if some loss, but not complete loss, seems very likely but there is still sufficient uncertainty to permit the asset to remain on the books at its full value. In addition, a Doubtful classification could reflect the fact that the primary

source of repayment is gone and serious doubt exists as to the quality of the secondary source of repayment.

(2) The possibility of loss on a Doubtful asset is high, but, because of certain important and reasonably specific pending factors which may work to the strengthening of the asset, its classification as an estimated loss is deferred until its more exact status may be determined.

(3) A Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resolve pending factors that may work to the strengthening of an asset. If pending events did not occur and repayment was deferred awaiting new developments, a Loss classification normally would be warranted. An entire asset should not be classified Doubtful if the probability of a partial recovery is substantial (for example, if there is private mortgage insurance and the probability of full insurance payment is substantial).

(c) Loss. An asset classified Loss is considered uncollectible and of such little value that continuance as an asset of the savings association is not warranted. A Loss classification does not mean that an asset does not have recovery or salvage value, but simply that it is not practical or desirable to defer writing off or reserving all or a portion of a basically worthless asset, even though partial recovery may be

effected in the future.

(d) Effect of classification. (1) When, pursuant to § 563.160 of this subchapter, a savings association has classified one or more assets, or portions thereof, Substandard or Doubtful, the savings association shall establish prudent general allowances for loan losses. When, pursuant to § 563.160 of this subchapter, an examiner has classified one or more assets, or portions thereof, Substandard or Doubtful, and has determined that the existing valuation allowances are inadequate, the savings association shall establish general allowances for loan losses in an appropriate amount as determined by the examiner.

(2) When, pursuant to § 563.160 of this subchapter, either a savings association or an examiner has classified one or more assets or portions thereof Loss, the savings association shall establish specific allowances for loan losses in the amount of 100 percent of the portion of the asset(s) classified Loss, or charge off such amount.

(3) Allowances provided on classified assets should be established consistent with Generally Accepted Accounting Principles. Asset evaluations (and the

corresponding allowances) that are

consistent with the practice of the Federal banking agencies may be used for supervisory purposes.

# § 571.27 Appraisal policies and practices of savings associations and service corporations.

- (a) Purpose. The purpose of this section is to offer to the management of savings associations and service corporations the Office's views on appraisal policies and practices that comport with principles of safety and soundness. This section is intended as guidance. It is not prescriptive, nor does it have the force and effect of law. Therefore, savings associations and service corporations may adopt appraisal standards different from those set forth in this section and still be consistent with the principles of safety and soundness required by § 563.170.
- (b) Definitions. For purposes of this section:
- (1) Management shall have the meaning given in § 563.171(b)(1) of this subchapter.
- (2) Market value shall have the meaning given in § 563.171(b)(2) of this subchapter.
- (3) Market value as is on appraisal date means an estimate of the market value of a property in the condition observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date the appraisal is prepared;
- (4) Market value as if complete on appraisal date means the market value of a property with all proposed construction, conversion, or rehabilitation hypothetically completed, or under other specified hypothetical conditions as of the date of the appraisal. With regard to properties wherein anticipated market conditions indicate that stabilized occupancy is not likely as of the date of completion, this estimate of value shall reflect the market value of the property as if complete and prepared for occupancy by tenants;
- (5) Prospective future value upon completion of construction means the prospective future value of a property on the date that construction is completed, based upon market conditions forecast to exist as of that completion date;
- (6) Prospective future value upon reaching stabilized occupancy means the prospective future value of a property at a point in time when all improvements have been physically constructed and the property has been leased to its optimum level of long term occupancy.

(c) Appraisal management.

Anagement is obligated by regulat

Management is obligated by regulation to take reasonable steps to ensure that all appraisals used to support credit and investment decisions report accurate values upon which to base lending decisions. Acceptable appraisals may include the following features:

(1) Management should provide appraisers with a letter of engagement that contains a legal description of the property, the interest to be appraised, the different value estimates requested, copies of the savings association's written guidelines, and a copy of the Office's rule, if the rules requirements are not specifically included within the savings association's appraisal policies. Management should attach to the letter of engagement information pertinent to the property that is necessary to comply with these requirements to the extent that this information is available. Such information should include, but is not limited to, financing data, leases, purchase agreements, and profit and

loss statements of the security property;
(2) Appraisals should be sufficiently current to reduce the likelihood that material changes in actual market conditions may have occurred by the time the loan or investment decision is

made;

(3) Appraisals should reflect the market value of the rights in real property offered as security or as part of the transaction. All other values or interests appraised should be clearly labeled and segregated, e.g., value of chattels, value of financing terms, business value, furnishings, fixtures, and equipment value;

(4) Appraisals should report the cost, income, and sales comparison approaches to market value unless the appraiser fully explains and supports the rationale for eliminating one or more

approaches to such value;

(5) Appraisers should analyze and report in reasonable detail:

(i) Any current agreement of sale, option, or listing of the property being appraised if such information is available to the appraiser in the normal

course of business:

(ii) A history of comparable sales used when the comparable sales properties have been sold several times during a brief period of time or when prices of comparable properties have been increasing or decreasing at a rate that is not typical for the local real estate market. Such sales analysis should cover the time period of the multiple transactions and address artificially altered sales prices;

(6) An appraisal of a proposed project, improvement, or change in use should be based upon the most recent plans and specifications. If material changes in the plans and specifications could significantly reduce the estimated collateral value after a loan or investment decision has been made, management should take steps to ensure that a current estimate of value is established based on the final plans and specifications for the project. This may be satisfied by having the original appraiser recertify his value or by obtaining a new appraisal based on the final plans and specifications;

(7) Appraisal reports should contain a properly supported estimate of the highest and best use of the property appraised that is consistent with the definition of market value set forth in paragraph (b)(2) of this section. Such estimate should be prepared whether or not the proposed use of the property is in fact the highest and best use. This highest and best use estimate should consider the effect on use and value of such factors as existing land use regulations, reasonably probable modifications of land use regulations, economic demand and supply, physical adaptability of the property, documentable property value trends, and optimal usage of the property. In addition, the appraisal should consider the effect on the property being appraised of anticipated public or private improvements, located on or off the site, to the extent that market actions reflect such anticipated improvements as of the appraisal date. Where appropriate, and in all cases involving proposed construction, development, or changes in use, the appraiser should specifically address, consider, and support the anticipated economic feasibility and cite all significant market data used in developing his conclusions. Such analyses should be presented in sufficient detail to support the appraiser's forecast of the probable success of the proposed use and should indicate whether this is in fact the highest and best use of the project. Moreover, if a market or economic feasibility study is prepared by someone other than the appraiser, the appraiser should set forth the reasoning and rationale for accepting or rejecting that study, or any portion thereof;

(8) Appraisals on all properties should report an estimate of "market value as is on appraisal date" as that term is defined in paragraph (b)(3) of this section.

(9) Appraisals on all properties wherein a portion of the overall real property rights or physical assets would typically be sold to their ultimate users over a future time period should report the following estimates of value: (i) "Market value as is on appraisal date" as defined in paragraph (b)(3) of this section;

(ii) "Market value as if complete on appraisal date" as defined in paragraph

(b)(4) of this section; and

(iii) "Prospective future value upon completion of construction" as defined in paragraph (b)(5) of this section.

Valuations involving such properties must fully reflect all appropriate deductions and discounts as well as the anticipated cash flows to be derived from the disposition of the asset over time. Appropriate deductions and discounts are considered to be those that reflect all expenses associated with the disposition of the real property as well as the cost of capital and entrepreneurial profit;

(10) Appraisals on all properties for which anticipated market conditions indicate stabilized occupancy is not likely as of the date of completion should report the following estimates of

value:

(i) "Market value as is on appraisal date" as defined in paragraph (b)(3) of this section;

(ii) "Market value as if complete on appraisal date" as defined in paragraph (b)(4) of this section;

(iii) "Prospective future value upon completion of construction" as defined in paragraph (b)(5) of this section; and

(iv) "Prospective future value upon reaching stabilized occupancy on the date of stabilization" as defined in paragraph (b)(6) of this section.

Such valuations should fully reflect the anticipated pattern of income and pertinent operating expenses during the absorption period as well as the impact upon the value estimates of rental and other concessions;

- (11) Appraisals should reflect, in the valuation of fractional interests in the real estate, the accepted premise that it is inappropriate to arrive at the value of the whole by simply summing the fractional interests. Similarly, it is also inappropriate to arrive, without market support, at the value of a fractional interest in the real estate by merely subdividing the value of the whole into proportional parts. All analyses involving fractional interests in the real estate, where the combined value of all interests on estates is not reported, should establish with market evidence whether the terms and conditions of the agreement creating the estate or fractional interest reflect market rates and terms.
- (d) Appraisal content. The content of each appraisal accepted by an association should follow generally

accepted and established appraisal practices. Specifically, each appraisal

should:

(1) Contain reasonable supporting documentation, with no pertinent information withheld, and not misleading so that when read by any third party, the appraiser's logic, reasoning, judgment, and analysis in arriving at a final conclusion indicate to the reader the reasonableness of the

market value reported;
(2) Unequivocally identify, by legal
description or otherwise, the real estate

being appraised as this information is provided to the appraiser by management (management is obliged to ensure, prior to funding, that the appraised real estate is described in a manner consistent with the description found in the association's evidence of debt or encumbrance);

(3) Identify the property rights being

appraised;

(4) Describe all salient features of the

property being appraised;

(5) State that the purpose of the appraisal is to estimate market value as defined in paragraph (b)(2) of this section:

(6) Set forth the effective date(s) of the value conclusion(s) and the date of the

report:

(7) Set forth the appraisal procedures followed and the data considered that support the reasoning, analyses, adjustments, opinions, and conclusions (including highest and best use) arrived at by the appraiser;

(8) As it relates to sales comparable data analysis, be presented so that:

(i) It contains descriptive information presented with sufficient detail to demonstrate that the transactions were conducted under the terms and conditions of the definition of value being estimated, or have been adjusted to meet such conditions; have a highest and best use equivalent to the best use of the subject property; and that the selected properties are physically and economically comparable to the subject property; and

(ii) It includes a presentation and explanation of adjustments used in the analysis together with appropriate

market support.

(9) Contain a summary of actual annual operating statements for existing income-producing properties made available to the appraiser by the lender and/or borrower, together with a supported forecast of the most likely future financial performance. If the appraiser is told that actual operating statements are unavailable, the appraiser should so indicate. The appraiser should report current rents and current vacancies;

(10) Set forth all material assumptions and limiting conditions that affect the analyses, opinions, and conclusions in the report. Such assumptions and limiting conditions may not result in either a non-market value estimate or one so limited in scope that the final product will not represent a complete appraisal. A summary of all such assumptions and limiting conditions shall be presented in one separate section within the appraisal;

(11) Include in the appraiser's

certification:

 A statement that the appraiser has no present or prospective interest in either the property being appraised or with the parties involved;

(ii) A statement indicating whether or not the appraiser made a personal inspection of the subject property; and

(iii) A statement indicating that to the best of the appraiser's ability, the analyses, opinions, and conclusions were developed and the report was prepared in accordance with the appraisal standards of the savings association.

### PART 574—ACQUISITION OF CONTROL OF SAVINGS ASSOCIATIONS

Sec.

574.1 Scope of part.

574.2 Definitions.

574.3 Acquisition of control of savings associations.

574.4 Control.

574.5 Certifications of ownership and other reports.

574.6 Procedural requirements.

574.7 Determination by the Office.

574.8 Qualified stock issuances by undercapitalized savings associations or holding companies.

574.9 Delegations of authority. 574.100 Rebuttal of control agreement.

Authority: Sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a; sec. 2(7), 54 Stat. 876, as amended (12 U.S.C. 1817).

### § 574.1 Scope of part.

The purpose of this part is to implement the provisions of the Change in Bank Control Act, 12 U.S.C. 1817(j) ("Control Act"), and the Savings and Loan Holding Company Act, 12 U.S.C. 1467a ("Holding Company Act"), relating to acquisitions and changes in control of savings associations that are organized in stock form and holding companies thereof.

### § 574.2 Definitions.

As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(a) "Acquire" when used in connection with the acquisition of stock

of a savings association means obtaining ownership, control, power to vote, or sole power of disposition of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, exchange, succession, or other means, including:

(1) An increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class, and

(2) The acquisition of stock by a group of persons and/or companies acting in concert which shall be deemed to occur upon formation of such group: Provided, That an investment advisor shall not be deemed to acquire the voting stock of its advisee if the advisor:

(i) Votes the stock only upon instruction from the beneficial owner,

and

(ii) Does not provide the beneficial owner with advice concerning the voting of such stock.

(b) Acquiror means a person or company.

(c) Acting in concert means:

(1) Knowing participation in a joint activity or interdependent conscious parallel action towards a common goal whether or not pursuant to an express agreement, or

(2) A combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(3) A person or company which acts in concert with another person or company ("other party") shall also be deemed to be acting in concert with any person or company who is also acting in concert with that other party, except that any tax-qualified employee stock benefit plan as defined in § 563b.2(a)(39) will not be deemed to be acting in concert with its trustee or a person who serves in a similar capacity solely for the purpose of determining whether stock held by the trustee and stock held by the plan will be aggregated.

(d) Affiliate means any person or company which controls, is controlled by or is under common control with a person, savings association or company.

(e) BIF means the Bank Insurance Fund, as established by the Federal Deposit Insurance Act, 12 U.S.C. 1811 et

(f) Company means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in

paragraph (r) of this section; but a company does not include:

(1) The Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Office of Thrift Supervision, or any Federal Home Loan

(2) Any company the majority of shares of which is owned by:

(i) The United States or any State, (ii) An officer of the United States or any State in his or her official capacity,

(iii) An instrumentality of the United

States or any State.
(g) Controlling shareholder means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of

(h) Director means the Director of the

Office of Thrift Supervision.

(i) District Director means the senior representative of the Director for all matters dealing with examination and supervision of savings associations in the District in which the savings association with respect to which an application or other document is being filed pursuant to this part has its home

(j) Immediate family means a person's spouse, father, mother, children, brothers, sisters and grandchildren; the father, mother, brothers, and sisters of the person's spouse; and the spouse of the person's child, brother or sister.

(k) Management official means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a savings association or a company, whether or not incorporated.

(1) Office means the Office of Thrift

Supervision.

(m) Person means an individual or a group of individuals acting in concert who do not constitute a "company" as defined in paragraph (f) of this section.

(n) Repealed Control Act means the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q), as in effect immediately prior to its repeal by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(o) SAIF means the Savings Association Insurance Fund, as

established by the Federal Deposit Insurance Act, 12 U.S.C. 1811et seq.

(p) Savings Association means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or any cooperative bank which is deemed by the Office to be a savings association under 12 U.S.C. 1467a(1), and any savings and loan holding company as defined in paragraph (q) of this section.

(q) Savings and loan holding company means any company that directly or indirectly controls a savings association,

but does not include:

(1) Any company by virtue of its ownership or control of voting stock of a savings association acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the Office) as will permit the sale thereof on a reasonable basis; and

(2) Any trust (other than a pension, profit-sharing, stockholders', voting, or business trust) which controls a savings association if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and:

(i) Was in existence and in control of a savings association on June 26, 1967,

(ii) Is a testamentary trust.

(r) Similar organization for purposes of paragraph (f) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

(1) The transferability and voting of any stock or other indicia of participation in another entity, or

(2) Achievement of a common or shared objective, such as to collectively manage or control another entity.

(s) Stock means common or preferred stock, general or limited partnership shares or interests, or similar interests.

(t) Uninsured institution means any financial institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(u)(1) Voting stock means common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interests, by statute, charter or in any manner, entitle the holder:

(i) To vote for or to select directors. trustees, or partners (or persons exercising similar functions of the issuing savings association or companyl:

(ii) To vote or to direct the conduct of the operations or other significant policies of the issuer:

(2) Notwithstanding anything in paragraph (u)(1) of this section, preferred stock, limited partnership shares or interests, or similar interests

are not "voting stock" if:

(i) Voting rights associated with the stock, shares or interests are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the stock, security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the stock. security or interest, the dissolution of the issuer, or the payment of dividends by the issuer when preferred dividends are in arrears:

(ii) The stock, shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuer; and

(iii) The stock, shares or interests do not at the time entitle the holder, by statute, charter, or otherwise, to select or to vote for the selection of directors. trustees, or partners (or persons exercising similar functions) of the

(3) Notwithstanding anything in paragraphs (u)(1) and (u)(2) of this section, "voting stock" shall be deemed to include stock and other securities that, upon transfer or otherwise, are convertible into voting stock or exercisable to acquire voting stock where the holder of the stock, convertible security or right to acquire voting stock has the preponderant economic risk in the underlying voting stock. Securities immediately convertible into voting stock at the option of the holder without payment of additional consideration shall be deemed to constitute the voting stock

into which they are convertible; other convertible securities and rights to acquire voting stock shall not be deemed to vest the holder with the preponderant economic risk in the underlying voting stock if the holder has paid less than 50 percent of the consideration required to directly acquire the voting stock and has no other economic interest in the underlying voting stock. For purposes of calculating the percentage of voting stock held by a particular acquiror, stock or other securities convertible into voting stock or exercisable to acquire voting stock which are deemed voting stock under this paragraph (u)(3) shall be included in calculating the amount of voting stock held by the acquiror and the total amount of stock outstanding only to the extent of the voting stock obtainable by such acquiror by such conversion or exercise of rights.

## § 574.3 Acquisition of control of savings associations.

(a) Acquisition by a company or certain persons. Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior approval under paragraph (d) of this section, no company or any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting stock of a savings and loan holding company, shall acquire control, as defined in § 574.4 (a) and (b) of this part, of a savings association except upon receipt of the written

approval of the Office.

(b) Acquisition by a person. Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior notice under paragraph (d) of this section, no person (other than certain persons affiliated with a savings and loan holding company who are subject to § 574.3(a), above), shall acquire control, as defined in § 574.4 (a) and (b) of this part, of a savings association until written notice has been provided to the Office and (1) the Office indicates in writing its intent not to disapprove the proposed acquisition or (2) 60 days (or such period of time as the Office may specify if the review period has been extended under § 574.6(c)(3) of this part) have passed since receipt of a notice deemed sufficient under § 574.6(c)(2). Notwithstanding the forgoing, acquisitions by persons by means of a merger with an interim association are not subject to this part, but shall be subject to approval under § 563.22, and either § 552.13 or applicable state law.

(c) Exempt transactions. (1) The following transactions are exempt from

the application requirements of paragraph (a) of this section:

(i) Control of a savings association acquired by devise under the terms of a will creating a trust which is excluded from the definition of savings and loan holding company under § 574.2(q) of this part;

(ii) Control of a savings association acquired in connection with a reorganization which involves solely the acquisition of control of that association by a newly formed company which is controlled by the same acquirors that controlled the savings association for the immediately preceding three years, and entails no other transactions, such as an assumption of the acquirors' debt by the newly formed company: Provided, That the acquirors have filed an H-(e)4 notification as provided in § 574.6 of this part and the chief Counsel or his or her delegate does not object to the acquisition within 30 days of the filing date;

(iii) Control of a savings association acquired solely as a result of (A) a pledge or hypothecation of stock to secure a loan contracted for in good faith or (B) the liquidation of a loan contracted for in good faith, in either case where such loan was made in the ordinary course of the business of the lender: Provided, further, That acquisition of control pursuant to such pledge, hypothecation or liquidation is reported to the Office within 30 days, and Provided, further, That the acquiror shall not retain such control for more than one year from the date on which such control was acquired; however, the Office may, upon application by an acquiror, extend such one-year period from year to year, for an additional period of time not exceeding three years, if the Office finds such extension is warranted and would not be detrimental to the public interest;

(iv) Control of a savings association acquired through a percentage increase in stock ownership following a pro rata stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;

(v) Acquisition of additional stock after approval under § 574.7 of this part, or any predecessor provision, has been received: *Provided*, That such acquisition is consistent with any conditions imposed in connection with such approval and with the representations made by the acquiror in its application;

(vi) Acquisitions of up to twenty-five percent (25%) of a class of stock by a tax-qualified employee stock benefit plan as defined in § 563b.2(a)(39); and (vii) Acquisitions of up to 15 percent of the voting stock of any savings association by a savings and loan holding company (other than a bank holding company) in connection with a qualified stock issuance if such acquisition is approved by the Office pursuant to § 574.8(a).

(2) The following transactions are exempt from the notice requirements of

paragraph (b) of this section:

(i) Transactions which are exempt pursuant to paragraphs (c)(1)(iii), (c)(1)(iv) and (c)(1)(v) of this section;

(ii) Transactions for which approval is required under paragraph (a) of this section:

(iii) Transactions for which approval is required under Part 546 or § 552.13 and § 563.22 of this chapter;

(iv) Acquisition of additional stock of a savings association by any person

(A) Has held power to vote 25 percent or more of any class of voting stock in such association continuously since March 9, 1979; or

(B) Has maintained control of the savings association continuously since acquiring control in compliance with the Control Act (or the Repealed Control Act) and the Office's regulations thereunder then in effect: Provided, That such acquisition is consistent with any conditions imposed in connection with such acquisition of control and with the representations made by the acquiror in its notice.

(v) Acquisitions of stock of a de novo federal savings association in connection with the organization of such association: Provided, That the Office has considered the financial and managerial resources of the acquiror in granting the association its federal savings association charter; and additional acquisitions of stock of such association, and further provided, that the acquisitions are consistent with any conditions imposed in connection with the approval of the association's charter and with representations made by the acquiror in its application for a federal savings association charter, and that the District Director has no supervisory objection to the acquiror's additional acquisitions.

(3) An acquiror that would be considered to be in control of a savings association pursuant to § 574.4 of this part on December 26, 1985, shall not be subject to this § 574.3 unless the acquiror acquires additional stock of the savings association or obtains a control factor with respect to such association after December 26, 1985: Provided, That an acquiror shall not be deemed to have

acquired control of a savings

association on the basis of actions taken prior to December 26, 1985, or on the basis of actions taken after December 26, 1985, if such actions are pursuant to and consistent with a materially complete application under the Holding Company Act or notice under the Repealed Control Act filed prior to December 28, 1985, if such acquisition is made pursuant to an application approved under the Holding Company Act or a notice under the Repealed Control Act that was not disapproved.

(d) Transactions exempt from prior

approval or notice.

(1) Subject to the conditions set forth in paragraph (d)(2) of this section, the following transactions are exempt from prior approval and prior notice under § 574.3: Provided, That the timing of the transaction was not within the control of the acquiror.

(i) Control of a savings association acquired through bona fide gift;

(ii) Control of a savings association acquired through liquidation of a loan contracted in good faith where the loan was not made in the ordinary course of business of the lender;

(iii) Control of a savings association acquired through a percentage increase in ownership following a stock split or redemption that was not pro rata;

(iv) Control determined pursuant to § 574.4 (a) or (b) as a result of actions by third parties that are not within the control of the acquiror;

(v) Control of a savings association acquired through testate or intestate succession: Provided, That the acquiror transmits written notification of the acquisition to the Office within 60 days of the acquisition and provides such additional information as the Office may specifically request.

(2) The exemptions provided by paragraphs (d)(1)(i) through (d)(1)(iv) of this section are subject to the following

conditions:

(i) The acquiror shall file an application, notice or rebuttal, as appropriate, with the Office within 90 days of acquisition of control:

(ii) The acquiror shall not take any action to direct the management or policies of the savings association or which are designed to effect a change in the business plan of the savings association other than voting on matters that may be presented to stockholders by management of the savings association until the Office has acted favorably upon the acquiror's application or notice, and the Office may require that the acquiror take such steps as the Office deems necessary to insure that control is not exercised; and

(iii) If the Office disapproves the acquiror's application or notice, the acquiror shall divest such portion of the stock held by the acquiror so as to cause the acquiror not to be determined to be in control of the savings association under § 574.4 of this part, within one year or such shorter period of time and in the manner that the Office may order.

(e) Prohibited acquisitions. No acquisition shall be approved by the Office pursuant to § 574.3(a) which would result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one state where the acquisition causes a savings association to become an affiliate of another savings association with which it was not previously affiliated unless:

(1) Such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional state or states pursuant to section 13(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(k) (or section 408(m) of the National Housing Act as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(2) Such company controls a savings association subsidiary which operated a home or branch office in the additional state or states as of March 5, 1987; or

(3) The statute laws of the state in which the savings association, control of which is to be acquired, is located are such that a savings association chartered by such state could be acquired by a savings association chartered by the state where the acquiring savings association or savings and loan holding company is located (or by a holding company that controls such a state chartered savings association). and such statute laws specifically authorize such an acquisition by language to that effect and not merely by implication.

### § 574.4 Control.

(a) Conclusive control. (1) An acquiror shall be deemed to have acquired control of a savings association, other than a savings and loan holding company, if the acquiror directly or indirectly, through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 25 percent of any class of voting stock of the savings

association;

(ii) Acquires irrevocable proxies representing more than 25 percent of any class of voting stock of the savings association;

(iii) Acquires any combination of voting stock and irrevocable proxies representing more than 25 percent of any class of voting stock of a savings association; or

(iv) Controls in any manner the election of a majority of the directors of

the savings association.

(2) An acquiror shall be deemed to have acquired control of a company, including a savings and loan holding company, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(i) Acquires more than 25 percent of any class of voting stock of the

company;

(ii) Acquires irrevocable proxies representing more than 25 percent of any class of voting stock of the company;

(iii) Acquires any combination of voting stock and irrevocable proxies representing more than 25 percent of any class of voting stock of a savings association;

(iv) Controls in any manner the election of a majority of the directors or trustees of a company;

(v) Is a general partner of a company; (vi) Has contributed more than 25 percent of the capital of the company; or

(vii) Is a trustee of a trust.

(3) A company shall be deemed to control a savings association if the Office finds, after notice and opportunity for hearing, that the company has the power directly or indirectly, to exercise a controlling influence over the management or policies of the savings association.

(4) A person shall be deemed to control a savings association if the Office determines that such person has the power to direct the management or policies of the savings association.

- (b) Rebuttable control determinations. (1) Except as provided in § 574.8, an acquiror shall be determined, subject to rebuttal, to have acquired control of a savings association, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:
- (i) Acquires more than 10 percent of any class of voting stock of the savings association and is subject to any control factor, as defined in paragraph (c) of this section;
- (ii) Acquires more than 25 percent of any class of stock of the savings association and is subject to any control

factor, as defined in paragraph (c) of this

2) An acquiror shall be determined. subject to rebuttal, to have acquired control of a savings association, if the acquiror directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies, holds any combination of voting stock and revocable and/or irrevocable proxies, representing more than 25 percent of any class of voting stock of a savings association, excluding such proxies held in connection with a solicitation by, or in opposition to, a solicitation on behalf of management of the savings association, but including a solicitation in connection with an election of directors, and such proxies would enable the acquiror to:

(i) Elect one-third or more of the savings association's board of directors, including nominees or representatives of the acquiror currently serving on such

board;

(ii) Cause the savings association's stockholders to approve the acquisition or corporate reorganization of the savings association; or

(iii) Exert a continuing influence on a material aspect of the business

operations of the savings association. (c) Control factors. For purposes of paragraph (b)(1) of this section, the following constitute control factors. References to the acquiror include actions taken directly or indirectly, or through one or more subsidiaries or transactions or acting in concert with one or more persons or companies:

(1) The acquiror would be one of the two largest holders of any class of voting stock of the savings association.

(2) The acquiror would hold more than 25 percent of the total stockholders equity of the savings association.

(3) The acquiror would hold more than 35 percent of the combined debt securities and stockholders' equity of the savings association.

(4) The acquiror is party to any

agreement:

(i) Pursuant to which the acquiror possesses a material economic stake in the savings association resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the savings association; or

(ii) that enables the acquiror to influence a material aspect of the management or policies of the savings association, other than agreements to which the savings association is a party where the restrictions are customary under the circumstances and in the case of an acquisition agreement, which apply only during the period when the

acquiror is seeking the Office's approval to acquire the savings association, the agreement prohibits transactions between the acquiror and the savings association and their respective affiliates without approval by the District Director or his or her designee during the pendency of the application process, and the agreement contains no material forfeiture provisions applicable to the savings association in the event the acquisition is not approved or not approved by a specified date.

(5) The acquiror would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of a class of the savings association's voting stock or to vote more than 25 percent of a class of the savings association's voting stock in the future upon the occurrence of a

future event.

(6) The acquiror would have the power to direct the disposition of more than 25 percent of a class of the savings association's voting stock in a manner other than a widely dispersed or public offering.

(7) The acquiror and/or the acquiror's representatives or nominees would constitute more than one member of the savings association's board of directors.

(8) The acquiror or a nominee or management official of the acquiror would serve as the chairman of the board of directors, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer or in any position with similar policymaking authority in the savings association.

(d) Rebuttable presumptions of concerted action. An acquiror will be presumed to be acting in concert with the following persons and companies:

(1) A company will be presumed to be acting in concert with a controlling shareholder, partner, trustee or management official of such company with respect to the acquisition of stock of a savings association, if

(i) Both the company and the person own stock in the savings association,

(ii) The company provides credit to the person to purchase the savings association's stock, or

(iii) The company pledges its assets or otherwise is instrumental in obtaining financing for the person to acquire stock of the savings association;

(2) A person will be presumed to be acting in concert with members of the person's immediate family;

(3) Persons will be presumed to be acting in concert with each other where

(i) Both own stock in a savings association and both are also management officials, controlling shareholders, partners, or trustees of another company, or

(ii) One person provides credit to another person or is instrumental in obtaining financing for another person to purchase stock of the savings association:

(4) A company controlling or controlled by another company and companies under common control will be presumed to be acting in concert;

(5) Persons or companies will be presumed to be acting in concert where they constitute a group under the beneficial ownership reporting rules under section 13 or the proxy rules under section 14 of the Securities Exchange Act of 1934, promulgated by the Securities and Exchange Commission.

(6) A person or company will be presumed to be acting in concert with any trust for which such person or company serves as trustee, except that a tax-qualified employee stock benefit plan as defined in § 563b.2(a)(39) shall not be presumed to be acting in concert with its trustee or person acting in a similar fiduciary capacity solely for the purposes of determining whether to combine the holdings of a plan and its trustee or fiduciary.

(7) Persons or companies will be presumed to be acting in concert with each other and with any other person or company with which they also are presumed to act in concert.

(e) Procedures for rebuttal—(1) Rebuttal of control determination. An acquiror attempting to rebut a determination of control that would arise under paragraph (b) of this section shall file a submission with the Office setting forth the facts and circumstances which support the acquiror's contention that no control relationship would exist if the acquiror acquires stock or obtains a control factor with respect to a savings association. The rebuttal must be filed and accepted in accordance with this section before the acquiror acquires such stock or control factor.

(i) An acquiror seeking to rebut the determination of control arising under paragraph (b)(1) of this section shall submit to the Office an executed agreement materially conforming to the agreement set forth at § 574.100 of this part. Unless agreed to by the Office in writing, no other agreement or filing shall be deemed to rebut the determination of control arising under paragraph (b)(1) of this section. If accepted by the Office, the acquiror shall furnish a copy of the executed agreement to the association to which the rebuttal pertains.

- (ii) An acquiror seeking to rebut the determination of control with respect to holding of proxies arising under paragraph (b)(2) of this section shall be subject to the requirements of paragraph (e)(1) of this section, except that in the case of a rebuttal of the presumption of control arising under paragraph (b)(2) of this section, the Office may require the acquiror to furnish information in response to a specific request for information and depending upon the particular facts and circumstances, to provide an executed rebuttal agreement materially conforming to the agreement set forth at § 574.100 of this part, with any modifications deemed necessary by the Office.
- (2) Presumptions of concerted action. An acquiror attempting to rebut the presumption of concerted action arising under paragraph (d) of this section shall file a submission with the Office setting forth facts and circumstances which clearly and convincingly demonstrate the acquiror's contention that no action in concert exists. Such a statement must be accompanied by an affidavit, in form and content satisfactory to the Office, executed by each person or company presumed to be acting in concert, stating that such person or company does not and shall not, without having made necessary filings and obtained approval or clearance thereof under the Holding Company Act or the Control Act, as applicable, have any agreements or understandings, written or tacit, with respect to the exercise of control, directly or indirectly, over the management or policies of the savings association, including agreements relating to voting, acquisition or disposition of the savings association's stock. The affidavit shall also recite that the signatory is aware that the filing of a false affidavit may subject the person or company to criminal sanctions, would constitute a violation of the Office's regulations at 12 CFR 563.186(b), and would be considered a "presumptive disqualifier" under 12 CFR 574.7(g)(1)(v).
- (3) Determination. A rebuttal filed pursuant to paragraph (e) of this section shall not be deemed sufficient unless it includes all the information, agreements, and affidavits required by the Office and this part, as well as any additional relevant information as the Office may require by written request to the acquiror. Within 20 calendar days after proper filing of a rebuttal submission, the Office will provide written notification of its determination to accept or reject the submission; request additional information in connection with the submission; or return the submission to the acquiror as materially

- deficient. Within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Office, the Office shall notify the acquiror in writing as to whether the rebuttal is thereby deemed to be sufficient. If the Office fails to notify an acquiror within such time, the rebuttal shall be deemed to be accepted. The Office may reject any rebuttal which is inconsistent with facts and circumstances known to it or where the rebuttal does not clearly and convincingly refute the rebuttable determination of control or presumption of action in concert, and may determine to reject a submission solely on such
- (f) Safe harbor. Notwithstanding any other provision of this section, where an acquiror has no intention to participate in or to seek to exercise control over a savings association's management or policies, the acquiror may seek to qualify for a safe harbor with respect to its ownership of stock of a savings association.
- (1) In order to qualify for the safe harbor, an acquiror must submit a certification, which shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

The undersigned makes this submission pursuant to \$ 574.4(f) of the regulations of the Office of Thrift Supervision ("Office") with respect to [name of savings association] and hereby certifies to the Office the following:

The undersigned is not in control of [name of savings association] under § 574.4(a);

The undersigned is not subject to any control factor as enumerated in § 574.4(c) with respect to the [name of savings association];

The undersigned will not solicit proxies relating to the voting stock of [name of savings association];

Before any change in status occurs that would bring the undersigned within the scope of § 574.4 (a) or (b), the undersigned will file and obtain approval of a rebuttal, notice or application, as appropriate.

The undersigned has not acquired stock of [name of savings association] for the purpose or effect of changing or influencing the control of [name of savings association] or in connection with or as a participant in any transaction having such purpose or effect.

(2) An acquiror claiming safe-harbor status may vote freely and dissent with respect to its own stock. Certifications provided for in this paragraph shall be submitted to the Office in accordance with § 574.6(b)(3) of this part.

### § 574.5 Certifications of ownership and other reports.

(a) Acquisition of stock. (1) Upon the acquisition of beneficial ownership which exceeds, in the aggregate, 10

- percent of any class of stock of a savings association or additional stock above 10 percent of the stock of a savings association occurring after December 26, 1985, an acquiror shall file in accordance with § 574.6(b)(4) of this part a certification with the Office as described in this section.
- (2) The certification filed pursuant to this section shall be signed by the acquirer or an authorized representative thereof and shall read as follows:

The undersigned is the beneficial owner of 10 percent or more of a class of stock of [name of savings association or holding company]. The undersigned is not in control of such association or company, as defined in 12 CFR 574.4(a), and is not subject to a rebuttable determination of control under § 574.4(b), and will take no action that would result in a determination of control or a rebutjable determination of control without first filing and obtaining approval of an application under the Savings and Loan Holding Company Act, 12 U.S.C. 1467a, or notice under the Change in Bank Control Act, 12 U.S.C. 1817(j), or filing and obtaining acceptance by the Office of Thrift Supervision of a rebuttal of the rebuttable determination of control.

- (3) Notwithstanding anything contained in this paragraph (a), an acquiror is not required to file a certification if (i) the Office has approved the acquisition of the savings association or (ii) the acquiror has filed a materially complete application or notice pursuant to § 574.3 of this part.
- (b) Reports of loans secured by voting stock. Whenever a savings association, or a bank which has accounts insured by the Federal Deposit Insurance Corporation, makes a loan, or loans, secured (or to be secured) by 25 percent or more of the outstanding voting stock of a savings association, unless the borrower has been the owner of record of such stock for a period of one year or more or the stock is of a newly organized association prior to its opening, a report shall be filed with the Office by the president or other chief executive officer of the lending institution containing the following information:
  - (1) The name of the borrower;
  - (2) The date and amount of the loan;
- (3) The name of the savings association which has issued or is to issue the stock securing the loan; and
- (4) The number of shares securing the loan.
- (c) Privacy. All reports and certifications filed under this § 574.5 shall be for the information of the Office in connection with its examination functions and shall be provided confidential treatment by the Office.

### § 574.6 Procedural requirements.

(a) Form of application or notice. An application or notice required by § 574.3 of this part shall be filed in the form prescribed by the Office as provided in this section. An acquiror may request confidential treatment of portions of an application or notice only by complying with the requirements of § 574.6(f) of this part. In the case of an application involving a merger (including a merger with an interim association) the application forms specified below shall be used in lieu of an application that otherwise would be required for such merger under § 546.2, § 552.13, and § 563.22 of this chapter.

(1) H-(e)1. This application shall be used for all applications filed under § 574.3(a) by a company, other than a savings and loan holding company, for approval of an acquisition of one

savings association.

(2) H-(e)1-S. Notwithstanding the provisions of paragraph (a)(1) of this section, an application filed under § 574.3(a) that satisfies each of the conditions for automatic approval specified in 12 CFR 574.7 (a)(2) and (a)(3), need only include the following information:

(i) A copy of the Registration Statement, including exhibits, filed or to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended 'Securities Act"). If no such Registration Statement has been or will be filed, a copy of any materials, including proxy statements, furnished or to be furnished to shareholders in connection with the reorganization, should be provided, together with a brief description of the facts relied upon for concluding that an exemption from registration is available under the Securities Act;

(ii) Copies of the savings association's most recent Community Reinvestment Act statement and examination report, and any Community Reinvestment Act comments filed with the savings association within the one year period preceding the filing of the application;

(iii) A certification that the proposed reorganization will have no effect on management interlocks compliance under the Depository Institutions Management Interlocks Act, the Holding Company Act, or the regulations promulgated thereunder, 12 CFR 563f

(iv) A certification that the savings association is eligible to file Application H-(e)1-S because the proposed reorganization transaction satisfies each of the conditions specified in 12 CFR

574.7 (a)(2) and (a)(3);

(v) For any officer or director of the savings association that has served in such a capacity for less than a one year period on the date of the filing of the application, the biographical portion of the Office's Biographical and Financial Report on Form 1393;

(vi) Copies of any new or amended employment contracts to which the savings association or the proposed holding company is or will be a party that are entered into as a part of, or in connection with, the reorganization transaction, and information relating to salary increases, if any, to be effective upon consummation of the reorganization transaction;

vii) In the event any of the proposed officers, directors or controlling shareholders of the proposed holding company owns 10 percent or more of a class of voting stock of a commercial bank, bank holding company or other depository institution, information identifying the institution, the number of shares owned and the percentage of outstanding shares owned. If no proposed officers, directors or controlling shareholders own such a percentage of shares, an affirmative statement to such effect should be provided;

(viii) The following information and documents, but only in the event that such information and documents are not included in the Registration Statement or other materials furnished pursuant to § 574.6(a)(2)(i); provided however, that to the extent such information and documents are included in the Registration Statement or other materials filed pursuant to § 574.6(a)(2)(i), the applicant shall include a cross-reference sheet specifying the document and page number where such information and

documents are located: (A) the information required by Item 3 of Application H-(e)1 relating to information about controlling persons of the proposed holding company;

(B) the information required by Item 4 of Application H-(e)1 relating to the details of the proposed transaction;

(C) a statement as to the reasons for proposing the reorganization;

(D) the information required by Item 5 of Application H-(e)1 relating to fees, commissions and expenses;

(E) the information required by Item 6 of Application H-(e)1 relating to regulatory approval;

(F) the information required by Item 11 of Application H-(e)1 relating to the board of directors and executive officers

of the proposed holding company; (G) a statement of capitalization as of a date no more than 90 days prior to the date of the filing of the application that

shows the savings association and the holding company on a historical basis, pro forma adjustments, if any, and the holding company on a pro forma basis;

(H) a description of the business intended to be done by the holding company for the twelve month period commencing with the filing of the

application;

(I) a description of the present dividend policy of the savings association, and a description of the proposed dividend policy of the savings association and the holding company subsequent to the reorganization;

(J) a copy of any contracts or agreements pursuant to which the reorganization is to be accomplished;

(K) a copy of the charter and bylaws of the holding company; and

(L) a copy of any opinions of counsel or revenue rulings received by the savings association or the holding company in connection with the

reorganization.

(ix) A consolidated business plan conforming to requirements set by the District Director.

(3) H-(e)2. This application shall be used for all applications filed under § 574.3(a) for approval of acquisitions of:

(i) One or more savings associations by a savings and loan holding company

(ii) More than one savings association by any other company.

This application shall also be used for all applications filed under § 574.3(a) to acquire control of a savings association by any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of such holding company, and for all applications filed under § 574.8 regarding the acquisition by a savings and loan holding company of shares issued by a savings association in a qualified stock issuance pursuant to \$ 574.8(a): Provided That the Office may determine as a general matter or on a case by case basis not to require information required by Form H-(e)2 not relevant to applications by such persons or such savings and loan holding companies.

(4) H-(e)3. This application shall be used for all applications filed under

§ 574.3(a):

(i) By a savings and loan holding company for approval of acquisitions by a merger, consolidation, or purchase of assets of a savings association or uninsured institution or a savings and loan holding company, or

(ii) By any company for approval of acquisitions by a merger, consolidation, or purchase of assets of two or more

savings associations.

(5) H-(e)4. This information filing shall be used to claim that a reorganization is exempt from prior written approval of the Office under § 574.3(c)(1)(ii).

(6) Notice Form 1393, Parts A and B. This form shall be used for all notices filed under § 574.3(b) regarding the acquisition of control of a savings association by any person or persons not constituting a company except as provided in paragraph (a)(3) of this section.

(b) Filing requirements.

(1) Applications. Notices, and Rebuttals.

(i) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions that are not eligible to be processed under delegated authority pursuant to § 574.9(a) of this part shall be filed as follows: one copy with the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, labelled "Dockets Copy"; one (manually executed) copy with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552; one copy with the Senior Deputy Director for Supervision (Operations). Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552; and one copy with the District Director(s) of the district(s) in which the savings association or associations involved in the transaction have their home office or offices. Unsigned copies shall be

(ii) Complete copies including exhibits and all other pertinent documents of applications, notices, and rebuttal submissions eligible to be processed under delegated authority pursuant to § 574.9(a) of this part shall be filed as follows: two copies each with the District Director(s) for the district(s) in which the savings association or associations involved in the transaction have their home office or offices (including one manually executed copy); and one copy with the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Unsigned copies shall be conformed. Each copy shall include a summary of the proposed transaction including an explanation of why the application, notice, or rebuttal submission may be processed under delegated authority. and an affirmative representation that none of the conditions specified in § 574.9(a) that would preclude action under delegated authority are present. Such statement shall be clearly labeled

"Statement Regarding Eligibility for Processing Under Delegated Authority." If the person or company making the submission subsequently becomes aware of additional information or changed circumstances that would alter the eligibility of the application, notice, or rebuttal submission for processing under delegated authority, the company or person shall promptly so advise the District Director in writing.

(iii) All companies submitting applications under Section 574.3 of this part shall comply with section 7A of the Clayton Act (15 U.S.C. 18A) and regulations issued thereunder (parts 801, 802, and 803 of title 16 of the Code of

Federal Regulations)

(iv) Any acquiror filing a notice pursuant to § 574.3(b) of this part shall file three additional copies of the notice with the District Director, and shall label such copies "FDIC Copy," "Comptroller Copy" and "Federal Reserve Copy," respectively. In addition, any acquiror filing a notice pursuant to § 574.3(b) of this part with respect to acquisition of a statechartered association shall file an additional copy of the notice with the District Director and label such copy "State Supervisor Copy."

(v) In the case of an application involving a merger (including a merger involving an interim association), the applicant shall file four additional copies of the application with the District Director, and shall label such copies "FDIC Copy," "Comptroller Copy," "Federal Reserve Copy," and

"DOJ Copy," respectively.
(vi) In the case of an application filed on Form H-(e)2 (other than an application to which paragraph (b)(1)(v) of this section applies or an application under 574.8), the applicant shall file one additional copy of the application with the District Director and shall label such copy "DOI copy."

(vii) Any person or company may amend an application, notice, or rebuttal submission, or file additional information with respect thereto, upon request of the Office or, in the case of the party filing an application, notice, or rebuttal, upon such party's own

initiative.

(2) H-(e)4. Information Filing. Any information filing required to be made to claim that a reorganization is exempt from prior written approval of the Office under \$ 574.3(c)(1)(ii) shall be filed as follows: one copy shall be filed with the Secretariat, Office of Thrift Supervision. 1700 G Street NW., Washington, DC 20552, labelled "Dockets Copy;" one copy shall be filed with the Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision,

1700 G Street NW., Washington, D.C. 20552; and a third copy shall be filed with the District Director. Such a filing shall be clearly labeled "H-(e)4

Information Filing."

(3) Safe-harbor filing. In order to qualify for the safe harbor under § 574.4(f), a certification must be filed setting forth the information required by § 574.4(f). Three copies shall be submitted: one to the Secretariat, Office of Thrift Supervision, Washington, DC 20552, labelled "Dockets Copy;" one (manually signed) to the Chief Counsel, Corporate and Securities Division. Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552; and one to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. A fourth copy shall be transmitted to the District Director.

(4) Certification. Certifications required by § 574.5(a) shall be filed in the same manner as a safe-harbor filing under paragraph (b)(3) of this section.

(5) Reports of loans. Reports of loans required by § 574.5(b) shall be filed in the same manner as a safe-harbor filing under paragraph (b)(3) of this section.

(6) Reports on pledges, hypothecations and liquidations. Reports of pledges, hypothecations and liquidation transactions required by § 574.3(c)(1)(iii) shall be filed in the same manner as a safe-harbor filing under paragraph (b)(3) of this section.

(c) Sufficiency and waiver.

(1) Except as provided in § 574.6(c)(5), an application or notice filed pursuant to § 574.3 (a) or (b) shall not be deemed sufficient unless it includes all of the information required by the form prescribed by the Office and this part, including a complete description of the acquiror's proposed plan for acquisition of control whether pursuant to one or more transactions, and any additional relevant information as the Office may require by written request to the applicant. Unless an application or notice specifically indicates otherwise, the application or notice shall be considered to pertain to acquisition of 100 percent of a savings association's voting stock. Where an application or notice pertains to a lesser amount of stock, the Office may condition its approval or non-disapproval to apply only to such amount, in which case additional acquisitions may be made only by amendment to the acquiror's application or notice and the Office's approval or non-disapproval thereof. Failure by an applicant to respond completely to a written request by the Office for additional information within

30 calendar days of the date of such request may be deemed to constitute withdrawal of the application, notice, or rebuttal filing or may be treated as grounds for denial of an application, issuance of a notice of disapproval of a notice, or rejection of a rebuttal.

(2) The period for the Office's review of any proposed acquisition will commence upon receipt by the Office of a notice or application deemed sufficient under paragraph (c)(1) of this section. The Office shall notify an acquiror in writing within 30 calendar days after proper filing of an application or notice as to whether an application or notice-

(i) Is sufficient;

(ii) Is insufficient, and what additional information is requested in order to render the application or notice

sufficient; or

(iii) Is materially deficient and will not be processed: Provided, That if the public comment period specified in paragraph (e) of this section is extended, the 30 day period shall be extended for the same number of days the public comment period is extended. The Office also shall notify an acquiror in writing within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Office as to whether the application or notice is thereby deemed to be sufficient. If the Office fails to so notify an acquiror within such times, the application or notice shall be deemed to be sufficient as of the expiration of the

applicable period.

(3) After additional information has been requested and supplied, the Office may request additional information only with respect to matters derived from or prompted by information already furnished, or information of a material nature that was not reasonably available from the acquiror, was concealed, or pertains to developments subsequent to the time of the Office's initial request for additional information. With regard to information of a material nature that was not reasonably available from the acquiror or was concealed at the time an application or notice was deemed to be sufficient or which pertains to developments subsequent to the time an application or notice was deemed to be sufficient, the Office, at its option, may request such additional information as it considers necessary, or may deem the application or notice not to be sufficient until such additional information is furnished and cause the review period to commence again in its entirety upon receipt of such additional information.

(i) The 60-day period for the Office's review of an application or notice deemed to be sufficient also may be

extended by the Office for up to an additional 30 days.

(ii) The period for the Office's review of a notice may be further extended not to exceed two additional times for not more than 45 days each time if-

(A) the Office determines that any acquiring party has not furnished all the information required under this part;

(B) in the Office's judgment, any material information submitted is substantially inaccurate;

(C) the Office has been unable to complete an investigation of each acquiror because of any delay caused by, or the inadequate cooperation of, such acquiror; or

(D) the Office determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31 of the United States Code.

(iii) In the case of an application or notice that is not eligible for processing under delegated authority by the District Director pursuant to § 574.9(a), actions by the District Director or his or her designee shall not commence any of the periods described in this paragraph (c) for review.

(4) With respect to an H-(e)4 information filing, the Chief Counsel or his or her designee shall have 30 days after receipt of a filing deemed sufficient to disapprove the assertion that the company qualifies for the exemption provided in § 574.3(c)(1)(ii). After the expiration of such 30-day period without response from the Chief Counsel, the filing shall be deemed to be approved.

(5) The Office may waive any requirements of this paragraph (c)(5) determined to be unnecessary by the Office, upon its own initiative, upon the written request of an acquiring person.

or in a supervisory case.

(d) Publication. (1) An acquiror shall publish a notification as provided in this section no earlier than three calendar days before and no later than three calendar days after filing an application under § 574.3(a) or 574.8 or notice under § 574.3(b) and shall mail a copy of the notification to the association whose stock is sought to be acquired. Publication shall be made in the business section of a newspaper printed in the English language in:

(i) The community in which the home office of the savings association is located; and

(ii) If applicable, the community in which the home office of the largest subsidiary savings association of the acquiror is located.

If it is determined that the primary language of a significant number of adult residents of either community is a language other than English, the acquiror may be required to publish the notification simultaneously in the appropriate language(s).

(2) Notice published pursuant to paragraph (d) of this section shall be published in a manner that is conspicuous to the average reader and shall be made in substantially the

following form:

Notice of Filing of Application or Notice for Acquisition of a Savings Association

This is to inform the public that under § 574.3 of the Regulations of the Office of Thrift Supervision ("Office") for Acquisitions of Savings Associations [Acquiror] [has filed/ intends to file] an [application/notice] with the Office for permission to [acquire control of/purchase a qualified stock issuance of] [savings association], located in [location], on date or intended date of filing].

Anyone may write in favor of or protest against the [application/notice] and in so doing may submit such information as he or she deems relevant. Copies of all submissions must be sent to the District Director, [give name and address] [and in the case of applications or notices not delegated to the District Director under § 574.9(a), one copy to each of the following: Secretariat, Office of Thrift Supervision, 1700 G Street, NW. Washington, DC 20552, labeled "Dockets Copy;" Chief Counsel, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; and the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552] within 20 calendar days of the filing of the [application/notice]. Up to an additional 20 calendar days to submit comments may be obtained upon a showing of good cause if a written request is received by the District Director within the initial 20day period.

You may inspect the non-confidential portion of the [application/notice] and nonconfidential portions of all comments filed with the District Director [and in the case of applications and notices not delegated to the District Director, by contacting the FOIA Section, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.] If you have any questions concerning these procedures, contact the District Director, at \_, [and the FOIA Section at (202)

(3) Promptly after publication, the acquiror shall transmit copies of each notice and a publisher's affidavit of publication to the Senior Deputy Director for Supervision (Operations) and to the District Director(s) for the district(s) in which the savings associations involved in the acquisition have their home offices. In addition, where a savings association to be acquired (including a holding company

thereof) has securities registered under the Securities Exchange Act of 1934, one copy of the notice also shall be transmitted to the Chief Counsel, Corporate and Securities Division.

(4) Notice shall be provided to the appropriate state supervisor and to persons whose request for announcements under § 563e.6 of this subchapter have been received in time for such notification; these notices shall be in addition to legal notification as set forth in paragraph (d)(1) of this section. Any other persons who might have an interest in the application or notice may also be notified.

(5) Disclosure of any part of an application or notice shall be made only in compliance with paragraph (f) of this

section.

(e) Public comment. Comments by the public shall be submitted only as provided in this paragraph (e) or as requested by the Office. Within 20 calendar days of the date of filing (or up to 40 calendar days after such date if an extension is requested in writing within the initial 20-day period) anyone may file comments in favor of or in protest of the application or notice and in so doing may submit such information as he or she deems relevant. Comments received after the comment period, unverified accusations, or materials pertaining to an application, notice, other filing or public comment which the commenter is unwilling to have disclosed to the party making such submission, shall not be part of the record and need not be considered by the Office. Comments shall be filed in the manner and in the locations provided in paragraph (b) of this section for the application or notice to which the comments pertain.

(f) Disclosure. (1) Any application, notice, other filings, public comment, or portion thereof, made pursuant to this part for which confidential treatment is not requested in accordance with this paragraph (f), shall be immediately available to the public and not subject to the procedures set forth herein. Public disclosure shall be made of other portions of an application, notice, other filing or public comment in accordance with paragraph (f)(2) of this section, the provisions of the Freedom of Information Act (5 U.S.C. 552a) and parts 503 and 505 of this chapter. Applicants and other submitters should provide confidential and nonconfidential versions of their filings, as described in § 574.6(f) (2) and (3) in order to facilitate this process.

(2) Any person who submits any information or causes or permits any information to be submitted to the Office pursuant to this part may request that the Office afford confidential

treatment under the Freedom of Information Act to such information for reasons of personal privacy or business confidentiality, which shall include such information that would be deemed to result in the commencement of a tender offer under § 240.14d-2 of title 17 of the Code of Federal Regulations, or for any other reason permitted by Federal law. Such request for confidentiality must be made and justified in accordance with paragraph (f)(5) of this section at the time of filing, and must, to the extent practicable, identify with specificity the information for which confidential treatment may be available and not merely indicate portions of documents or entire documents in which such information is contained. Failure to specifically identify information for which confidential treatment is requested, failure to specifically justify the bases upon which confidentiality is claimed in accordance with paragraph (f)(5) of this section, or overbroad and indiscriminate claims for confidential treatment, may be bases for denial of the request. In addition, the filing party should take all steps reasonably necessary to ensure, as nearly as practicable, that at the time the information is first received by the Office (i) it is supplied segregated from information for which confidential treatment is not being requested, (ii) it is appropriately marked as confidential, and (iii) it is accompanied by a written request for confidential treatment which identifies with specificity the information as to which confidential treatment is requested. Any such request must be substantiated in accordance with paragraph (f)(5) of this

(3) All documents which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof shall be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page, stating "Confidential Treatment Requested by [name]." If such marking is impracticable under the circumstances. a cover sheet prominently marked "Confidential Treatment Requested by [name]" should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this manner should be individually marked with an identifying number and code so that they are separately identifiable.

(4) A determination as to the validity of any request for confidential treatment may be made when a request for disclosure of the information under the Freedom of Information Act is received, or at any time prior thereto. Five business days notice will be provided to the filing party if the Office receives a request for the information under the Freedom of Information Act and determines to disclose material for which confidential treatment has been requested.

(5) Substantiation of a request for confidential treatment shall consist of a statement setting forth, to the extent appropriate or necessary for the determination of the request for confidential treatment, the following information regarding the request:

(i) The reasons, concisely stated and referring to specific exemptive provisions of the Freedom of Information Act, why the information should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions which govern or may govern the treatment of

the information;

(iii) The existence and applicability of any prior determination by the Office, other Federal agencies, or a court, concerning confidential treatment of the information;

(iv) The adverse consequences to a business enterprise, financial or otherwise, that would result from disclosure of confidential commercial or financial information, including any adverse effect on the business' competitive position;

(v) The measures taken by the business to protect the confidentiality of the commercial or financial information in question and of similar information, prior to, and after, its submission to the

Office;

(vi) The ease or difficulty of a competitor's obtaining or compiling the commercial or financial information;

(vii) Whether commercial or financial information was voluntarily submitted to the Office, and, if so, whether and how disclosure of the information would tend to impede the availability of similar information to the Office;

(viii) The extent, if any, to which portions of the substantiation of the request for confidential treatment should be afforded confidential

treatment;

(ix) The amount of time after the consummation of the proposed acquisition for which the information should remain confidential and a justification thereof;

(x) Such additional facts and such legal and other authorities as the requesting person may consider

appropriate.

(6) Any person requesting access to an application, notice, other filing, or public comment made pursuant to this part for purposes of commenting on a pending submission may prominently label such request: "Request for Disclosure of Filing(s) Made Under Part 574/Priority Treatment Requested."

(g) Supervisory cases. The provisions of paragraphs (d), (e) and (f) of this section may be waived by the Office in connection with a transaction approved by the Office for supervisory reasons.

(h) Notification of State supervisor. Upon receiving a notice relating to an acquisition of control of a statechartered savings association, the Office shall forward a copy of the notice to the appropriate state savings and loan association supervisory agency, and shall allow 30 days within which the views and recommendations of such state supervisory agency may be submitted. The Office shall give due consideration to the views and recommendations of such state agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph (h), if the Office determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the default of the association involved in the proposed acquisition, the Office may dispense with the requirement of this paragraph (h) or, if a copy of the notice is forwarded to the state supervisory agency, the Office may request that the views and recommendations of such state supervisory agency be submitted immediately in any form or by any means acceptable to the Office.

(i) Additional procedures for acquisitions involving mergers. Acquisitions of control involving mergers (including mergers with an interim association) shall also be subject to the procedures set forth in § 563.22 of this chapter to the extent applicable, except as provided in paragraph (a) of

this Section.

## § 574.7 Determination by the Office.

(a) Acquisition by a company. (1) The Office shall approve an application by any company other than a savings and loan holding company to acquire control of one savings association unless it determines that the criteria set forth in paragraph (c) of this section are not met. Acquisitions involving mergers with an interim association shall also be subject to §§ 546.2, 552.13, 563.22 and 571.5.

(2) Subject to compliance with the requirements of §§ 546.2, 552.13 and 563.22, as applicable, an application filed pursuant to § 574.6(a)(2) by a savings association solely for the

purpose of obtaining approval for the creation of a savings and loan holding company by such savings association, and related applications for permission to organize an interim federal association, and for merger with such interim association, shall be deemed to be approved 45 calendar days after such applications are properly filed in accordance with the procedures set forth herein, unless, prior to such date:

(i) The Office has requested additional information of the applicant

in writing;

(ii) Notified the applicant that the application is materially deficient and will not be processed; or

(iii) Denied the application prior to that time; provided that to be eligible for approval under this paragraph (a)(2):

(A) The holding company shall not be capitalized initially in an amount exceeding the amount the savings association is permitted to pay in dividends to its holding company as of the date of the reorganization pursuant to applicable regulations or, in the absence thereof, pursuant to the then current policy guidelines issued by the Senior Deputy Director for Supervision (Policy):

(B) The creation of the savings and loan holding company by the association is the sole transaction contained in the application, and there are no other transactions requiring Office approval incident to the creation of the holding company (other than the creation of an interim association that will disappear upon consummation of the reorganization and the merger of the savings association with such interim association to effect the reorganization), and the holding company is not also seeking any regulatory waivers, regulatory forbearances, or resolution of legal or supervisory issues;

(C) The board of directors and executive officers of the holding company are composed of persons who, at the time of acquisition, are executive officers and directors of the association;

(D) The acquisition raises no significant issues of law or policy under

then current Office policy;

(E) Prior to consummation of the reorganization transaction, the holding company shall enter into any dividend limitation, regulatory capital maintenance, or prenuptial agreement required by Office regulations, or in the absence thereof, required pursuant to policy guidelines issued by the Senior Deputy Director for Supervision (Policy);

(F) The holding company shall furnish the following information in accordance with the specified time frames:

(1) On the business day prior to the date of consummation of the acquisition,

the chief financial officers of the holding company and the savings association shall certify to the District Director or his or her designee in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of the holding company or the savings association since the date of the financial statements submitted with the application;

(2) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the District Director or his or her designee a certification by legal counsel stating the effective date of the acquisition, the exact number of shares of stock of the savings association acquired by the holding company, and that the acquisition has been consummated in accordance with the provisions of all applicable laws and regulations and the application;

(3) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the District Director or his or her designee an opinion from its independent auditors certifying that the transaction was consummated in accordance with generally accepted accounting

principles; and

(4) No later than thirty days from the date of consummation of the acquisition, the holding company shall file with the District Director or his or her designee a certification stating that the holding company will not cause the savings association to deviate materially from the business plan submitted in connection with the application, unless prior written approval from the District Director or his or her designee is obtained;

(G) In the event an interim association is utilized to facilitate the reorganization transaction, the resulting association shall, no later than 30 days from the date of consummation of the reorganization transaction, furnish a certification by legal counsel stating:

(1) The effective date of the merger involving the interim association and that the merger has been consummated in accordance with the Agreement and Plan of Reorganization or similar document pursuant to which the transaction was accomplished;

(2) The interim association has not opened for business;

(3) The merger was consummated within 120 calendar days of the date of approval: and

(4) After completion of the organization of the interim association, the board of directors of the interim association ratified the Agreement and Plan of Reorganization or similar document; and

(H) The proposed acquisition shall be consummated within 120 days after the application is automatically approved

under this § 574.7(a)(2).

(3) To the extent that an association reorganizing into holding company form is subject to provisions relating to its mutual to stock conversion imposed by 12 CFR 563b.3(c)(9), (c)(17), (c)(18), (c)(19), (g)(1) or (i), such provisions shall be applicable to any holding company approved automatically pursuant to paragraph (a)(2) of this section.

(b) Acquisition by a savings and loan holding company. The Office shall not approve an acquisition by a savings and loan holding company to acquire control of a savings association, by any other company to acquire control of more than one savings association, by any director or officer of a savings and loan holding company, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting stock of a savings and loan holding company to acquire control of a savings association, or by a savings and loan holding company to acquire a qualified stock issuance by a savings association pursuant to § 574.8 of this part, except in accordance with paragraph (c) of this section. Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Office shall request from the Attorney General and consider any report rendered within 30 days of such request on the competitive factors involved. Acquisitions involving mergers (including mergers with an interim association) shall also be subject to §§ 546.2, 552.13, 563.22, and 571.5.

(c) Application criteria. The Office may deny an application by a company or certain persons, described in paragraph (b) of this section, affiliated with a savings and loan holding company, to acquire control of a savings association, or by a savings and loan holding company to acquire a qualified stock issuance pursuant to § 574.8, if the Office finds that the financial and managerial resources and future prospects of the acquiror and association involved would be detrimental to the association or the insurance risk of the SAIF or BIF, or if the acquiror fails or refuses to furnish information requested by the Office. In connection with applications filed pursuant to § 574.6 (a)(2) and (a)(3) and § 574.8 of this part, the Office will also consider the convenience and needs of the community to be served. Moreover, the Office shall not approve any proposed acquisition:

(1) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States, or

(2) The effect of which on any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Office finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served.

(d) Notice criteria. In making its determination whether to disapprove a notice, the Office may disapprove any proposed acquisition, if the Office

determines that:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking business in any part of the United States;

(2) The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of the acquiring person is such as might jeopardize the financial stability of the association or prejudice the interests of the depositors of the association;

(4) The competence, experience, or integrity of the acquiring person or any of the proposed management personnel indicates that it would not be in the interests of the depositors of the association, the Office, or the public to permit such person to control the association:

(5) The acquiring person fails or refuses to furnish information requested by the Office; or

(6) The Office determines that the proposed acquisition would have an adverse effect on the SAIF or the BIF.

(e) Failure to disapprove a notice. If, upon expiration of the 60-day review period of any notice deemed to be sufficient filed pursuant to § 574.6(c), or extension thereof, the Office has failed to disapprove such notice, the proposed acquisition may take place: Provided, That it is consummated within one year and in accordance with the terms and representations in the notice and that there is no material change in circumstances prior to the acquisition.

(f) (1) Disapproval of a notice. Within three business days after its decision to disapprove a notice, the Office shall notify the acquiror in writing of the grounds for disapproval. If the disapproval was issued by the District Director or the Senior Deputy Director for Supervision (Operations) pursuant to delegated authority, such notification shall include a statement that the acquiror may request review of the disapproval by the Director within 20 days of the receipt of such notification. If such review is denied by the Director or the disapproval was issued by the Director, the acquiror may request an administrative hearing under paragraph (4) of the Control Act within 10 days of receipt of the notification of disapproval or notification of the Director's decision not to review the denial.

(2) Appeal. Denial of an application or notice or rejection of a rebuttal by the District Director pursuant to section 574.9(a) may be appealed to the Office under the following procedures: Within 20 days after notification of the District Director's decision as provided herein, the acquiror must notify the Secretariat in writing of the acquiror's desire to appeal the District Director's decision. Two copies of such request for review must be submitted to the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, with one copy indicated "Attention: Senior Deputy Director for Supervision (Operations) and a second copy indicated "Attention: Corporate and Securities Division." A third copy should be sent to the appropriate District Office. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the District Director's denial or notice of disapproval or rejection is contended to be erroneous. If an applicant does not file an appeal within the time permitted under this section, any objection to the District Director's action is waived. A timely appeal filed with the Secretariat in accordance with the provisions of this section shall be mandatory for securing judicial review of an initial determination.

(g) Presumptive disqualifiers—(1) Integrity factors. The following factors shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the managerial resources and future prospects tests of paragraph (c) of this section or the integrity test of paragraph (d)(4) of this section:

(i) During the 10-year period immediately preceding filing of the application or notice, criminal, civil or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:

(A) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime or racketeering;

(B) Violation of securities or commodities laws or regulations;

(C) Violation of depository institution laws or regulations;

(D) Violation of housing authority laws or regulations; or

(E) Violation of the rules, regulations, codes of conduct or ethics of a selfregulatory trade or professional

organization; (ii) Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of

the acquiror, of (A) Any application relating to the organization of a financial institution,

(B) An application to acquire any financial institution or holding company thereof under the Holding Company Act or the Bank Holding Company Act or

(C) A notice relating to a change in control of any of the foregoing under the Control Act or the Repealed Control

(D) An application or notice under a state holding company or change in

control statute;

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of the Office, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or the former Federal Savings and Loan Insurance Corporation) or controlling shareholder of a company or savings association that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the Office or any predecessor agency (or its delegate) in connection with an application, notice or other filing under this part that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such an application, notice or other

(vi) Acquisition and retention at the time of submission of an application or notice, of stock in the savings association by the acquiror in violation of § 574.3 or its predecessor sections.

(2) Financial factors. The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial-resources and future-prospects tests of paragraph (c) of this section, or the financial condition test of paragraph (d)(3) of this section:

(i) Liability for amounts of debt which, in the opinion of the Office, create excessive risks of default and pressure on the savings association to be acquired; or

(ii) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with

economical home financing.

#### § 574.8 Qualified stock issuances by undercapitalized savings associations or holding companies.

(a) Acquisitions by savings and loan holding companies. No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if prior approval of such acquisition is granted by the Office under this section 574.8, unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) Qualification. For purposes of this section, any issuance of shares of stock shall be treated as a qualified stock

issuance if the following conditions are

(1) The shares of stock are issued by-

(i) an undercapitalized savings association, which for purposes of this paragraph (b)(1)(i) shall mean any savings association-

(A) the assets of which exceed the liabilities of such association; and

(B) which does not comply with one or more of the capital standards in effect under section 5(t) of the Home Owners' Loan Act; or

(ii) a savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

(2) All shares of stock issued consist of previously unissued stock or treasury shares.

(3) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Office in accordance with the provisions of section 10(b) of the Home Owners' Loan Act and the Office's regulations promulgated thereunder.

(4) Subject to paragraph (c) of this section, the Office approves the purchase of the shares of stock by the acquiring savings and loan holding company.

(5) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

(6) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 61/2 percent of the total assets of such savings association.

(7) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings

association or savings and loan holding

(8) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company

or any of its affiliates.

(9) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11 of the Home Owners' Loan Act and the Office's regulations promulgated thereunder.

(c) Approval of acquisitions.

(1) Criteria. The Office, in deciding whether to approve or deny an application filed on the basis that it is a qualified stock issuance, shall apply the application criteria set forth in § 574.7(c) of this part, including the presumptive disqualifiers set forth in § 574.7(g) of this part.

(2) Additional capital commitments not required. The Office shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Office or any other Federal agency having jurisdiction.

(3) Other conditions. The Office shall impose such conditions on any approval of an application for the purchase of stock in connection with a qualified stock issuance as the Office determines

to be appropriate, including-

(i) a requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Office may require; and

(ii) such other conditions as the Office deems necessary or appropriate to prevent evasions of this section, including, but not limited to, requiring a rebuttal of control agreement in a form substantially similar to that appearing at \$ 574.100.

(4) Application deemed approved if not disapproved within 90 days. An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Office if such application has not been disapproved by the Office before the end of the 90-day period beginning on the date such application has been deemed sufficient under this part.

(d) No limitation on class of stock issued. The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

(e) Application form. A savings and loan holding company making application to acquire a qualified stock issuance pursuant to this § 574.8, shall use Form H-[e]2, as provided in § 574.6(a)(3).

#### § 574.9 Delegations of authority.

(a) Actions by the District Director. The District Director or his or her designee is authorized to take any action that the Office is authorized to take under this part, except as follows:

(1) The District Director or his or her designee may not take any action with respect to any application filed under § 574.3(a) of this part or notice filed under § 574.3(b) of this part if any of the following conditions are present:

(i) The acquisition is opposed by the savings association to be acquired or is contested by another prospective

acquiror:

(ii) The application or notice raises a significant issue of law or policy; or

(iii) The acquisition is a part of a conversion under Part 563b of this chapter.

(2) The District Director or his or her designee may not take any action with respect to any application filed under

§ 574.8 of this part.

(3) The District Director or his or her designee may grant or deny a request for waiver of certified financial statements for an acquiror's proprietary interests required in connection with a notice filed under § 574.3(b) of this part, provided the acquiror furnishes the following substitute information:

(i) A statement supporting the acquiror's contention that production of such certified financial statements is

unduly burdensome;

(ii) Tables setting forth:

(A) The amount of investment in the savings association and the investment as a percentage of the acquiror's net worth; and

(B) The amount of each entry as a percentage of the acquiror's total assets, net worth and gross income; and

- (iii) The latest available Federal income tax returns for each entity for the immediately preceding two taxable years.
- (4) The District Director or his or her designee may not take any action with respect to any rebuttal filed under § 574.4(e) of this part if any of the following conditions are present:

(i) With a rebuttal of control, the acquiror submits an executed rebuttal agreement that does not conform in all material respects to the agreement set forth in § 574.100;

(ii) With a rebuttal of concerted action, an acquiror submits an executed affidavit that does not conform in all material respects to the requirements of \$ 574.4(e)(2) of this part;

(iii) The rebuttal raises a significant

issue of law or policy;

(iv) The proposed acquisition of securities or other action covered by the rebuttal is opposed by the savings association whose securities are to be acquired or there is a competing acquiror for the savings association's securities; or

(v) The acquisition is part of a conversion under Part 563b of this

chapter.

- (b) Joint actions by the Senior Deputy Director for Supervision (Operations) and the Chief Counsel. The Senior Deputy Director for Supervision (Operations) with the concurrence of the Chief Counsel, or their respective designees, are authorized to take any action that the Office is authorized to take under this part, except approve or disapprove an application filed under § 574.3(a) of this part that raises a significant issue of law or policy, or disapprove or issue notice of intent not to disapprove a notice filed under § 574.3(b) of this part that raises a significant issue of law or policy.
- (c) Actions by the Director. Any action that the Office is authorized to take under this part may be taken by the Director.

### § 574.100 Rebuttal of control agreement.

#### Agreement

Rebuttal of Rebuttable Determination Of Control Under Part 574

#### I. WHEREAS

A. [ ] is the owner of [ ] shares (the "Shares") of the [ ] stock (the "Stock") of [name and address of association], which Shares represent [ ] percent of a class of "voting stock" of [ ] as defined under the Acquisition of Control Regulations ("Regulations") of the Office of Thrift Supervision ("Office"), 12 CFR part 574 ("Voting Stock");

B. [ ] is a "savings association" within the

meaning of the Regulations;

C. [ ] seeks to acquire additional shares of stock of [ ] ("Additional Shares"), such that [ ]'s ownership thereof will exceed 10 percent of a class of Voting Stock but will not exceed 25 percent of a class of Voting Stock of [ ]; [and/or] [ ] seeks to [ ], which would constitute the acquisition of a "control factor" as defined in the Regulations ("Control Factor");

D. [ ] does not seek to acquire the [Additional Shares or Control Factor] for the purpose or effect of changing the control of [ ] or in connection with or as a participant in

any transaction having such purpose or effect;

E. The Regulations require a company or a person who intends to hold 10 percent or more but not in excess of 25 percent of any class of Voting Stock of a savings association or holding company thereof and that also would possess any of the Control Factors specified in the Regulations, to file and obtain approval of an application ("Application") under the Savings and Loan Holding Company Act ("Holding Company Act"), 12 U.S.C. 1467a, or file and obtain clearance of a notice ("Notice") under the Change in Control Act ("Control Act"), 12 U.S.C. 1817(j), prior to acquiring such amount of stock and a Control Factor unless the rebuttable determination of control has been rebutted.

F. Under the Regulations, [ ] would be determined to be in control, subject to rebuttal, of [ ] upon acquisition of the [Additional Shares or Control Factor];

G. [ ] has no intention to manage or

control, directly or indirectly, [ ]:

H. [ ] has filed on [ ], a written
statement seeking to rebut the determination of control, attached hereto and incorporated by reference herein, (this submission referred to as the "Rebuttal");

I. In order to rebut the rebuttable determination of control. [ ] agrees to offer this Agreement as evidence that the acquisition of the [Additional Shares or Control Factor] as proposed would not constitute an acquisition of control under the Regulations.

II. The Office has determined, and hereby agrees, to act favorably on the Rebuttal, and in consideration of such a determination and agreement by the Office to act favorably on the Rebuttal, [ ] and any other existing, resulting or successor entities of [ ] agree with the Office that:

A. Unless [ ] shall have filed a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either shall have obtained approval of the Application or clearance of the Notice in accordance with the Regulations, [ ] will not, except as expressly permitted otherwise herein or pursuant to an amendment to this Rebuttal Agreement:

1. Seek or accept representation of more than one member of the board of directors of [insert name of association and any holding company thereof];

2. Have or seek to have any representative serve as the chairman of the board of directors, or chairman of an executive or similar committee of [insert name of association and any holding company thereof]'s board of directors or as president or chief executive officer of [insert name of association and any holding company

3. Engage in any intercompany transaction with [ ] or [ ]'s affiliates;

4. Propose a director in opposition to nominees proposed by the management of [insert name of association and any holding company thereof] for the board of directors of [insert name of association and any holding company thereof] other than as permitted in paragraph A-1;

5. Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the stockholders [ ] other than in support of, or in opposition to, a solicitation conducted on behalf of management of [

6. Do any of the following, except as necessary solely in connection with [ ]'s performance of duties as a member of [ ]'s board of directors:

(a) Influence or attempt to influence in any respect the loan and credit decisions or policies of [ ], the pricing of services, any personnel decisions, the location of any offices, branching, the hours of operation or

similar activities of [ ];
(b) Influence or attempt to influence the dividend policies and practices of [ ] or any decisions or policies of [ ] as to the offering or exchange of any securities;

(c) Seek to amend, or otherwise take action to change, the bylaws, articles of incorporation, or character of [ ];

(d) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the management, policies or business operations of [ ]; or

(e) Seek or accept access to any non-public information concerning [ ].

B. [ ] is not a party to any agreement with I shall not assist, aid or abet any of I's affiliates or associates that are not

parties to this Agreement to act, or act in concert with any person or company, in a manner which is inconsistent with the terms hereof or which constitutes an attempt to evade the requirements of this Agreement

D. Any amendment to this Agreement shall only be proposed in connection with an amended rebuttal filed by [ ] with the Office for its determination;

E. Prior to acquisition of any shares of "Voting Stock" of [ ] as defined in the Regulations in excess of the Additional Shares, any required filing will be made by Junder the Control Act or the Holding Company Act and either approval of the acquisition under the Holding Company Act shall be obtained from the Office or any Notice filed under the Control Act shall be cleared in accordance with the Regulations;

F. At any time during which 10 percent or more of any class of Voting Stock of [ owned or controlled by [ ], no action which is inconsistent with the provisions of this Agreement shall be taken by [ ] until [ files and either obtains from the Office a favorable determination with respect to either an amended rebuttal, approval of an Application under the Holding Company Act, or clearance of a Notice under the Control Act, in accordance with the Regulations;

G. Where any amended rebuttal filed by [ ] is denied or disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after either (1) reducing the amount of shares of Voting Stock of [ ] owned or controlled by [ an amount under 10 percent of a class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations; or (2) filing a Notice under the Control Act, or an Application under the Holding Company Act, as appropriate, and either obtaining approval of the Application or clearance of the Notice, in accordance with the Regulations;

H. Where any Application or Notice filed by [ ] is disapproved, [ ] shall take no action which is inconsistent with the terms of this Agreement, except after reducing the amount of shares of Voting Stock of [ owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock, or immediately ceasing any other actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

I. Should circumstances beyond [ ]'s control result in [ ] being placed in a position to direct the management or policies of [ ], then [ ] shall either (1) promptly file an Application under the Holding Company Act or a Notice under the Control Act, as appropriate, and take no affirmative steps to enlarge that control pending either a final determination with respect to the Application or Notice, or (2) promptly reduce the amount of shares of [ ] Voting Stock owned or controlled by [ ] to an amount under 10 percent of any class of Voting Stock or immediately cease any actions that give rise to a conclusive or rebuttable determination of control under the Regulations;

J. By entering into this Agreement and by offering it for reliance in reaching a decision on the request to rebut the presumption of control under the Regulations, as long as 10 percent or more of any class of Voting Stock of [ ] is owned or controlled, directly or indirectly, by [ ], and [ ] possesses any Control Factor as defined in the Regulations, ] will submit to the jurisdiction of the Regulations, including (1) the filing of an amended rebuttal or Application or Notice for any proposed action which is prohibited by this Agreement, and (2) the provisions relating to a penalty for any person who willfully violates or with reckless disregard for the safety or soundness of a savings association participates in a violation of the [Holding Company Act or Control Act] and the Regulations thereunder, and any

regulation or order issued by the Office. K. Any violation of this Agreement shall be deemed to be a violation of the [Holding Company Act or Control Act] and the Regulations, and shall be subject to such remedies and procedures as are provided in the [Holding Company Act or Control Act] and the Regulations for a violation thereunder and in addition shall be subject to any such additional remedies and procedures as are provided under any other applicable statutes or regulations for a violation, willful or otherwise, of any agreement entered into with the Office.

III. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which counterparts collectively shall constitute one instrument representing the Agreement among the parties thereto. It shall not be necessary that any one counterpart be signed by all of the parties hereto as long as each of the parties has signed at least one counterpart.

IV. This Agreement shall be interpreted in a manner consistent with the provisions of the Rules and Regulations of the Office.

V. This Agreement shall terminate upon (i) the approval by the Office of [ ]'s

Application under the Holding Company Act or clearance by the Office of [ ]'s Notice under the Control Act to acquire [ ], and consummation of the transaction as described in such Application or Notice, (ii) in the disposition by [ ] of a sufficient number of shares of [ ], or (iii) the taking of such other action that thereafter [ ] is not in control and would not be determined to be in control of [ ] under the Control Act, the Holding Company Act or the Regulations of the Office as in effect at that time.

VI. IN WITNESS THEREOF, the parties thereto have executed this Agreement by

their duly authorized officer.

[Acquiror] Office of Thrift Supervision. Date: -

SUBCHAPTER E-REGULATIONS APPLICABLE TO STATE-CHARTERED SAVINGS ASSOCIATIONS

### PART 579—POSSESSION BY **CONSERVATORS FOR STATE** SAVINGS ASSOCIATIONS

579.1 Scope.

579.2 Procedure upon taking possession.

579.3

579.4 Inventory.

579.5 Inspection of reports.

Delegation by conservator. Surrender of possession by a 579.6

579.7 conservator.

579.8 Final discharge and release of conservator.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended ( 12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

#### § 579.1 Scope.

The regulations of this part shall govern conservators for state savings associations appointed by the Director of the Office.

#### § 579.2 Procedure upon taking possession.

(a) The conservator for a state association shall take possession of the association by taking possession of the principal office of the association and in accordance with the terms of the Office's appointment.

(b) Upon taking possession, the conservator shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Serve a copy of the order of appointment upon the savings association or upon its conservator, receiver or other legal custodian by:

(i) Leaving a certified copy of the order of appointment at the principal office of the savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian in the principal office of the savings association who appears to be in charge.

(3) Take possession of the savings association's books, records, and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the conservator knows to be holding or in possession of assets of the savings association, that the receiver has succeeded to all rights, titles, powers and privileges of the savings association.

(5) File with the Secretary to the Office a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof; and

(6) Post a notice on the door of the principal and other offices of the savings association in substantially the following form:

The (name of state association) is in the hands of the Conservator under appointment by the Director of the Office of Thrift Supervision.

#### Conservator

#### Date

(7) By operation of law and without any conveyance or other instrument, act or deed, succeed to the rights, titles, powers and privileges of the savings association, and to the rights, powers, and privileges of its stockholders, members, accountholders, depositors, officers, and directors. No stockholder, member, accountholder, depositor, officer, or director shall thereafter have or exercise any such right, power, or privilege, or act in connection with any of the savings association's assets or property.

#### § 579.3 Notice.

If the Director of the Office appoints a conservator under this Part, the Secretary to the Office shall mail a certified copy of the Office's appointment to the savings association's address as it appears in the Office's records and to the State official having jurisdiction over the savings association. Notice of the appointment shall be filed immediately for publication in the Federal Register.

## § 579.4 Inventory.

(a) As soon as practicable after taking possession, the conservator shall inventory the savings association's

assets as of the date possession was taken. The inventory shall include the value on the savings association's books of each asset, security therefor, a brief description of the asset and any security, and a record of the savings association's liabilities. The Senior Deputy Director for Supervision (Operations) must be satisfied that the method of listing assets provides such information.

(b) There shall be four copies of the inventory:

(1) Two copies shall promptly be filed with the Secretary to the Office.

(2) One copy shall promptly be filed with the Senior Deputy Director for Supervision (Operations).

(3) One copy shall be retained during the conservatorship in the savings association's principal office.

## § 579.5 Inspection of reports.

Unless the Director of the Office or Senior Deputy Director for Supervision (Operations) otherwise directs, the conservator's inventories, statements, and reports shall be in at least two copies. One copy shall be filed with the Office, and one copy shall be filed with the Senior Deputy Director for Supervision (Operations). The copies shall constitute permanent records of the conservatorship open for inspection whenever the office of the Secretary to the Office is open for business or at such times and on such conditions as the Director of the Office may direct.

## § 579.6 Delegation by conservator.

The conservator may delegate any powers and authorities vested in him or

#### § 579.7 Surrender of possession by a conservator.

(a) When the Director of the Office restores a state savings association in the hands of a conservator to its previous management, that action, except as the Director of the Office otherwise provides, shall restore the rights, titles, powers and privileges of its stockholders, members, accountholders, depositors, officers, and directors.

(b) When a receiver is appointed for a state savings association in the hands of a conservator, the conservator shall, as the Director of the Office may require, surrender possession of the association to the receiver.

#### § 579.8 Final discharge and release or conservator.

When relieved of all duties, the conservator shall file with the Office a report which the Office finds satisfactory. The Office may direct an audit in connection with the report and shall approve or disapprove the accounts of the conservator. If the accounts are approved, the conservator shall thereupon be completely and finally released.

#### PART 580—POSSESSION BY RECEIVERS FOR STATE SAVINGS ASSOCIATIONS

El ...

580.1 Scope

580.2 Procedure upon taking possession.

580.3 Notice of appointment.

580.4 Inventory.

580.5 Inspection of reports.

580.6 Delegation by receiver.

580.7 Final discharge and release of

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

#### § 580.1 Scope.

The regulations of this part shall govern receivers for state savings associations appointed by the Director of the Office.

## § 580.2 Procedure upon taking possession.

(a) The receiver for a state savings association shall take possession of the savings association by taking possession of the principal office of the savings association and in accordance with the terms of the Director of the Office's appointment.

(b) Upon taking possession, the

receiver shall immediately:

(1) Give notice of the appointment to any officer or employee in the principal office who appears to be in charge of that office.

(2) Serve a copy of the order of appointment upon the savings association or upon its conservator, receiver or other legal custodian by:

(i) Leaving a certified copy of the order of appointment at the principal office of the state savings association; or

(ii) Handing a certified copy of the order of appointment to the previous conservator, receiver or other legal custodian of the savings association, or to the officer or employee of the savings association or of the previous conservator, receiver or other legal custodian who shall be in the principal office of the savings association and appears to be in charge.

(3) Take possession of the savings association's books, records, and assets.

(4) Notify in writing, served personally or by registered mail or telegraph, all persons and entities that the receiver knows to to be holding or in possession of assets of the savings association, that the receiver has succeeded to all the rights, titles, powers and privileges of the savings association, and to the titles of any previous conservator, receiver or other legal custodian of the savings association appointed under state law.

(5) File with the Secretary to the Office a statement that possession was taken, including the time of the taking, which statement shall be conclusive

evidence thereof; and

(6) Post a notice on the door of the principal and other offices of the savings

association.

(i) If the appointment occurs during the three-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the notice shall be in substantially the following form:

The (name of savings association) is in the hands of the Resolution Trust Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.

### Receiver

#### Date

(ii) If the appointment occurs after the end of such period, the notice shall be in substantially the following form:

The (name of savings association) is in the hands of the Federal Deposit Insurance Corporation as Receiver under appointment by the Director of the Office of Thrift Supervision.

## Receiver

### Date

(7) By operation of law and without any conveyance or other instrument, act or deed, succeed to

 (i) All rights, titles, powers and privileges of the savings association, and of any stockholder, member, accountholder depositor, officer or director; and

(ii) Title to the books, records, and assets of every description of any conservator, receiver or other legal custodian of the savings association appointed under state law.

No stockholder, member, accountholder, depositor, officer, or director or any previous conservator, receiver or other legal custodian shall thereafter have or exercise any such right, title, powers or privileges or act in connection with any asset or property of any nature of the savings association.

(c) The receiver shall promptly notify by certified mail the court or other public authority having jurisdiction over such conservator, receiver or other legal custodian and any supervisory or regulatory authority to which the savings association was theretofore subject, of its possession of the savings association.

#### § 580.3 Notice of appointment.

If the Director of the Office appoints a receiver under this Part, the Secretary to the Office shall mail a certified copy of the appointment to the savings association's address as it appears in the Office's records and to the State official having jurisdiction over the savings association. Notice of the appointment shall be filed immediately for publication in the Federal Register.

## § 580.4 Inventory.

(a) As soon as practicable after taking possession, the receiver shall inventory the savings association's assets as of the date possession was taken. The inventory shall include the value on the savings association's books of each asset, security therefor, a brief description of the asset and any security, and a record of the savings association's liabilities. The Senior Deputy Director for Supervision (Operations) must be satisfied that the method of listing assets provides such information.

(b) There shall be four copies of the

inventory:

(1) Two copies shall promptly be filed with the Secretary to the Office.

(2) One copy shall promptly be filed with the Senior Deputy Director for Supervision (Operations).

(3) One copy shall be retained during the receivership in the savings association's principal office.

### § 580.5 Inspection of reports.

The receiver's inventories, statements, and reports shall be in at least as many copies as these regulations require or as the Director of the Office otherwise directs. One copy shall be filed with the Office and shall constitute the permanent records of the liquidation and shall be open for inspection at such time and on such conditions as the Director of the Office may direct, or in the absence of such direction, whenever the Office is open for business.

## § 580.6 Delegation by receiver.

The receiver may delegate any powers and authorities vested in him or her.

## § 580.7 Final discharge and release of receiver.

When the receiver recommends final distribution of assets or is otherwise relieved of its duties, it shall file with the Director of the Office a detailed report in form satisfactory to the Office. Unless the Director of the Office otherwise directs, upon final liquidation of the receivership or when the receiver completes, or is otherwise relieved of, its duties, the receivership shall be

examined and audited. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released.

#### SUBCHAPTER F-REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

## PART 583—DEFINITIONS

583.1 Acquire.

Affiliate. 583.2 583.3 Bank.

Bank holding company. 583.4

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583.6 Company. Control. 583.7

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583.14 Officer. 583.15 Parent company.

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583.20 Savings and loan holding company. 583.21 Savings association.

583.22 State.

Subsidiary. 583.23

583.24 Uninsured institution.

Authority: Sec. 2, 48 Stat. 128, [as amended 12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 15, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468).

#### § 583.1 Acquire.

The term acquire means to acquire, directly or indirectly, ownership or control through an acquisition of shares, an acquisition of assets or assumption of liabilities, a merger or consolidation, or any similar transaction.

## § 583.2 Affiliate.

The term affiliate of a specified savings association means any person or company which controls, is controlled by, or is under common control with, such savings association.

## § 583.3 Bank.

The term bank means any national bank, state bank, state-chartered savings bank, cooperative bank, or industrial bank, the deposits of which are insured by the Bank Insurance Fund and also includes any institution that converted from a savings association charter to a bank charter and whose deposits are insured by the Savings Association Insurance Fund.

### § 583.4 Bank holding company.

The term bank holding company means any company which has control over any bank or over any company that is or becomes a bank holding company.

#### § 583.5 BIF.

The term BIF means the Bank Insurance Fund, established by the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

## § 583.6 Company.

The term company means any corporation, partnership, trust, jointstock company, or similar organization, but does not include:

(a) The Federal Deposit Insurance

Corporation,

(b) The Resolution Trust Corporation,

(c) Any Federal Home Loan Bank, (d) The Office of Thrift Supervision, or (e) Any company the majority of the shares of which is owned by

(1) The United States or any State, (2) An officer of the United States or any State in his or her official capacity,

(3) An instrumentality of the United States or any State.

#### § 583.7 Control.

For purposes of this subchapter, a person shall be deemed to have control of:

(a) A savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

(b) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other

(c) A trust if the person is a trustee thereof; or

(d) A savings association or any other company if the Office determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

#### § 583.8 Corporation.

The term Corporation means the Federal Deposit Insurance Corporation.

#### § 583.9 Director.

The term director as used in any document specified in part 584 of this subchapter means any director of a corporation or any individual who performs similar functions in respect of any company, including a trustee under a trust.

#### § 583.10 District Director.

The term District Director means the senior representative of the Director for all matters dealing with the examination and supervision of savings associations in the District in which the subsidiary savings association of the registrant or applicant has its principal office, or in which the principal savings association business of the registrant or applicant is

#### § 583.11 Diversified savings and loan holding company.

The term diversified savings and loan holding company means any savings and loan holding company whose subsidiary savings association and related activities, as specified in 12 U.S.C. 1467a(c)(2), represented on either an actual or pro forma basis, less than 50 percent of its consolidated net worth at the close of its preceding fiscal year and of its consolidated net earnings for such fiscal year. For purposes of the foregoing, consolidated net worth and consolidated net earnings shall be determined in accordance with generally accepted accounting principles.

#### § 583.12 Multiple savings and loan holding company.

The term multiple savings and loan holding company means any savings and loan holding company which directly or indirectly controls two or more savings associations.

#### § 583.13 Office.

The term Office means the Office of Thrift Supervision.

#### § 583.14 Officer.

The term officer as used in any document specified in Part 584 of this subchapter means the chairman of the board, president, vice president, treasurer, secretary, or comptroller of any company, or any other person who participates in its major policy decisions.

## § 583.15 Parent company.

The term parent company means any company which directly or indirectly

controls any other company or companies.

#### § 583.16 Person.

The term person means an individual or company.

#### § 583.17 Qualified thrift lender.

The term qualified thrift lender means a financial institution that meets the appropriate qualified thrift lender test set forth in § 584.6 of this subchapter.

#### § 583.18 Registrant.

The term registrant means a savings and loan holding company filing a registration statement with the Office pursuant to § 584.1. of this subchapter.

#### § 583.19 SAIF.

The term SAIF means the Savings Association Insurance Fund, established by the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.).

#### § 583.20 Savings and loan holding company.

The term savings and loan holding company means any company that directly or indirectly controls a savings association, but does not include:

(a) Any company by virtue of its ownership or control of voting stock of a savings association or a savings and loan holding company acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the Office) as will permit the sale thereof on a reasonable basis; and

(b) Any trust (other than a pension, profit-sharing, stockholders', voting or business trust) which directly or indirectly controls a savings association if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and:

(1) Was in existence and was directly or indirectly in control of a savings association on June 26, 1967, or

(2) Is a testamentary trust.

#### § 583.21 Savings association.

The term savings association means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Corporation, and any corporation (other than a bank) the deposits of which are insured by the Corporation that the Office and the Corporation jointly determine to be

operating in substantially the same manner as a savings association, and shall include any savings bank or any cooperative bank which is deemed by the Office to be a savings association under 12 U.S.C. 1467a(1).

#### § 583.22 State.

The term State includes the District of Columbia and the Commonwealth of Puerto Rico.

#### § 583.23 Subsidiary.

The term subsidiary means any company which is owned or controlled directly or indirectly by a person, and includes any service corporation owned in whole or in part by a savings association, or a subsidiary of such service corporation.

#### § 583.24 Uninsured Institution.

The term uninsured institution means any depository institution the deposits of which are not insured by the Corporation.

### PART 584-REGULATED ACTIVITIES

584.1 Registration, examination and reports.

Prohibited activities. 584.2

Exempt savings and loan holding 584.2a companies and grandfathered activities. 584.2-l Prescribed services and activities of savings and loan holding companies.

584.2-2 Permissible bank holding company activities of savings and loan holding companies.

584.3 Transactions with affiliates.

Prohibited acquisitions.

Advance notice of proposed dividend declarations.

Qualified thrift lender status. 584.6

584.9 Prohibited acts.

584.10 Statements, applications, reports and notices to be filed.

584.11 Hearings.

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec 301, 103 Stat. 342 (12 U.S.C 1468).

### § 584.1 Registration, examination and reports.

(a) Filing of registration statements

and other reports-

(1) Filing of registration statement. Not later than 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Office by filing the appropriate registration statement specified in paragraph (a) of § 584.10 of this part.

(2) Filing of annual reports. Each registered savings and loan holding company, including subsidiary savings and loan holding companies, shall file

an annual report H-(b)11, except that such report need not be filed by a savings and loan holding company that has filed a registration statement H-(b)3, H-(b)4, or H-(b)5, or by a savings and loan holding company which is a trust (other than a business trust). Annual reports shall be filed not later than 120 days after the close of the fiscal year.

(3) Filing of H-(b)12. Each registered savings and loan holding company which is required to file report H-(b)11 shall file reports of current information on report H-(b)12. The H-(b)12 shall be filed within 15 days of the end of each month during which any of the events specified in the report occurs, unless the required information has been previously reported by the registrant.

(4) General. Registration statements, annual reports, and the H-(b)12 are filed with the Office by transmitting the original and requisite number of copies enumerated on the report to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and by submitting the requisite number of copies to the District Director. Copies of forms to be used in submitting registration statements, annual reports, and the H-(b)12 may be obtained from any District Director or his or her designee.

(b) Date of registration. The date of registration of a savings and loan holding company shall be the date on which its registration statement is received by the Senior Deputy Director for Supervision (Operations) and the District Director.

(c) Extension of time for registration. For timely and good cause shown, the Office may extend the time within which a savings and loan holding company shall register.

(d) Release from registration. The Office may at any time, upon its own motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Office shall determine that such company no longer has control of any

savings association.

(e) Reports. Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Office and the District Director such reports as may be required by the Office. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Office may prescribe. Each report shall contain such information concerning the operations of such savings and loan holding company

and its subsidiaries as the Office may

(f) Books and records. Each savings and loan holding company shall maintain such books and records as

may be prescribed by the Office.

(g) Examinations. Each savings and loan holding company and each subsidiary thereof shall be subject to such examinations as the Office may prescribe. The cost of such examinations (other than examinations of savings associations) shall be assessed against and paid by such holding company. Examination and other reports may be furnished by the Office to the appropriate State supervisory authority. The Office shall, to the extent deemed feasible, use for the purposes of this section reports filed with or examinations made by other Federal agencies or the appropriate

State supervisory authority.
(h) Appointment of agent. The Office may require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for

## § 584.2 Prohibited activities.

service of process.

(a) Evasion of law or regulation. No savings and loan holding company or subsidiary thereof which is not a savings association shall, for or on behalf of a subsidiary savings association, engage in any activity or render any services for the purpose or with the effect of evading any law or regulation applicable to such savings association.

(b) Unrelated business activity. No savings and loan holding company or subsidiary thereof that is not a savings association shall commence any business activity at any time, or continue any business activity after the end of the two-year period beginning on the date on which such company received approval to become a savings and loan holding company that is subject to the limitations of this paragraph (b), except (in either case) the following:

(1) Furnishing or performing management services for a savings association subsidiary of such company;

(2) Conducting an insurance agency or an escrow business;

(3) Holding, managing, or liquidating assets owned by or acquired from a subsidiary savings association of such company;

(4) Holding or managing properties used or occupied by a subsidiary savings association of such company;

(5) Acting as trustee under deed of trust:

(6) Any other activity:(i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to 12 CFR 225.23 or 225.25, unless the Office, by regulation, prohibits or limits any such activity for savings and loan holding companies; or

(ii) Is set forth in § 584.2-1 of this part, subject to the limitations therein; or

(7) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if prior approval for the acquisition of such stock by such savings and loan holding company is granted by the Office pursuant to 574.8 of this chapter. Notwithstanding the provisions of this paragraph (b), any savings and loan holding company that, between March 5, 1987 and August 10, 1987, received

approval pursuant to 12 U.S.C. 1730a(e), as then in effect, to acquire control of a savings association shall not continue any business activity other than those activities set forth in this paragraph (b)

after August 10, 1987.

(c) Treatment of certain holding companies. If a director or officer of a savings and loan holding company, or an individual who owns, controls, or holds with the power to vote (or proxies representing) more than 25 percent of the voting shares of a savings and loan holding company, directly or indirectly controls more than one savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in paragraph (b) of this section, to the same extent such limitations apply to multiple savings and loan holding companies pursuant to §§ 584.2, 584.2a, 584.2-1 and 584.2-2 of this part.

#### § 584.2a Exempt savings and loan holding companies and grandfathered activities.

(a) Exempt savings and loan holding companies. (1) The following savings and loan holding companies are exempt from the limitations of § 584.2(b) of this

(i) Any savings and loan holding company (or subsidiary of such company) that controls only one savings association, if the savings association subsidiary of such company is a qualified thrift lender as defined in § 583.17 of this subchapter.

(ii) Any savings and loan holding company (or subsidiary thereof) that controls more than one savings association if all, or all but one of the savings association subsidiaries of such company were acquired pursuant to an acquisition under section 13(c) or 13(k)

of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and all of the savings association subsidiaries of such company are qualified thrift lenders as defined in § 583.17 of this subchapter.

(2) Any savings and loan holding company whose subsidiary savings association(s) fails to qualify as a qualified thrift lender pursuant to § 584.6 of this subchapter may not commence, or continue, any service or activity other than those permitted under § 584.2(b) of this part, except that, the Office may allow, for good cause shown, such company (or subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations set forth in § 584.2(b) of this part: Provided, That effective August 9, 1990, any company that controls a savings association that should have become or ceases to be a qualified thrift lender, except a savings association that requalifed as a qualified thrift lender pursuant to section 10(m)(3)(D) of the Home Owners' Loan Act, shall within one year after the date on which the savings association fails to qualify as a qualified thrift lender, register as and be deemed to be a bank holding company, subject to all of the provisions of the Bank Holding Company Act, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act.

(b) Grandfathered activities for certain savings and loan holding companies. Notwithstanding § 584.2(b) of this part and subject to paragraph (c) of this section, any savings and loan holding company that received approval prior to March 5, 1987 to acquire control of a savings association may engage, directly or indirectly or through any subsidiary (other than a subsidiary savings association of such company) in any activity in which it was lawfully engaged on March 5, 1987, Provided,

That:

(1) The holding company does not, after August 10, 1987, acquire control of a bank or an additional savings association, other than a savings association acquired pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 406(f) or 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act

(2) Any savings association subsidiary of the holding company continues to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 after August 10, 1987;

(3) The holding company does not engage in any business activity other than those permitted under § 584.2(b) of this part or in which it was engaged on

March 5, 1987;

(4) Any savings association subsidiary of the holding company does not increase the number of locations from which such savings association conducts business after March 5, 1987. other than an increase due to a transaction under section 13(c) or 13(k) of the Federal Deposit Insurance Act, or under section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989; and

(5) Any savings association subsidiary of the holding company does not permit any overdraft (including an intra-day overdraft) or incur any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the savings association subsidiary and the affiliate.

(c) Termination by the Office of

grandfathered activities.

Notwithstanding the provisions of paragraph (b) of this section, the Office may, after opportunity for hearing, terminate any activity engaged in under paragraph (b) of this section upon determination that such action is necessary:

(1) To prevent conflicts of interest;

(2) To prevent unsafe or unsound practices; or

(3) To protect the public interest.

(d) Foreign holding company. Any savings and loan holding company organized under the laws of a foreign country as of June l, 1984 (including any subsidiary thereof that is not a savings association) that controlled a single savings association on August 10, 1987, shall not be subject to the restrictions set forth in § 584.2(b) of this part with respect to any activities of such holding company that are conducted exclusively in a foreign country.

(e) Bank holding company. The provisions of § 584.2(b) shall not apply to any company treated as a bank holding company for purposes of section 4 of the Bank Holding Company Act of 1956, or any of its subsidiaries.

§ 584.2-1 Prescribed services and activities of savings and loan holding companies.

(a) General. For the purpose of § 584.2(b)(6)(ii) of this part, the activities set forth in paragraph (b) of this section are, and were as of March 5, 1987, permissible services and activities for savings and loan holding companies or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations. Services and activities of service corporation subsidiaries of savings and loan holding company subsidiary savings associations are prescribed by paragraph (d) of this section. Notwithstanding and without regard to any other provision of this section other than this sentence, a savings and loan holding company and any subsidiary thereof that is not a savings association, other than a service corporation, may invest in the types of securities specified in §§ 545.71 and 566.1 of this chapter without regard to any limitation therein as to amount or maturity.

(b) Prescribed services and activities. Subject to the provisions of paragraph (c) of this section, a savings and loan holding company subject to restrictions on its activities pursuant to 584.2(b) of this part, or a subsidiary thereof which is neither a savings association nor a service corporation of a subsidiary savings association, may furnish or perform the following services and engage in the following activities to the extent that it has legal power to do so:

(1) Originating, purchasing, selling and servicing any of the following:

(i) Loans, and participation interests in loans, on a prudent basis and secured by real estate, including brokerage and warehousing of such real estate loans. except that such a company or subsidiary shall not invest in a loan secured by real estate as to which a subsidiary savings association of such company has a security interest;

(ii) Manufactured home chattel paper (written evidence of both a monetary obligation and a security interest of first priority in one or more manufactured homes, and any equipment installed or to be installed therein), including brokerage and warehousing of such chattel paper;

(iii) Loans, with or without security, for the altering, repairing, improving, equipping or furnishing of any residential real estate;

iv) Educational loans; and

(v) Consumer loans, as defined in § 545.50(b) of this chapter, Provided, That, no subsidiary savings association of such holding company or service corporation of such savings association shall engage directly or indirectly, in any transaction with any affiliate involving the purchase or sale, in whole or in part, of any consumer loan.

(2) Subject to the provisions of § 584.3 of this part, furnishing or performing clerical accounting and internal audit services primarily for its affiliates;

(3) Subject to the provisions of § 584.3 of this part, furnishing or performing the following services primarily for its affiliates, and for any savings association and service corporation subsidiary thereof, and for other multiple holding companies and affiliates thereof:

(i) Data processing;

(ii) Credit information, appraisals, construction loan inspections, and abstracting;

(iii) Development and administration of personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iv) Research, studies, and surveys;

(v) Purchase of office supplies, furniture and equipment;

(vi) Development and operation of storage facilities for microfilm or other duplicate records; and

(vii) Advertising and other services to procure and retain both savings accounts and loans;

(4) Acquisition of unimproved real estate lots, and acquisition of other unimproved real estate for the purpose of prompt development and subdivision,

(i) Construction of improvements,

(ii) Resale to others for such construction, or

(iii) Use as mobile home sites; (5) Development, subdivision and construction of improvements on real estate acquired pursuant to paragraph (b)(4) of this section, for sale or rental;

(6) Acquisition of improved real estate and mobile homes to be held for rental;

(7) Acquisition of improved real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(8) Maintenance and management of improved real estate;

(9) Underwriting or reinsuring

contract of credit life or credit health and accident insurance in connection with extensions of credit by the savings and loan holding company or any of its subsidiaries, or extensions of credit by any savings association or service corporation subsidiary thereof, or any other savings and loan holding company or subsidiary thereof;

(10) Preparation of State and Federal tax returns for accountholders of or borrowers from (including immediate

family members of such accountholders or borrowers but not including an accountholder or borrower which is a corporation operated for profit) an affiliated savings association;

(11) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985), and activities reasonably incident thereto; and

(12) Any services or activities approved by order of the former Federal Savings and Loan Insurance Corporation prior to March 5, 1987, pursuant to its authority under section 408(c)(2)(F) of the National Housing Act, as in effect at the time.

(c) Procedures for commencing services or activities. (1) Before a savings and loan holding company subject to restrictions on its activities pursuant to § 584.2(b) of this part or a subsidiary thereof may commence performing or engaging in a service or activity prescribed by paragraph (b) of this section, either de novo or by an acquisition of a going concern, it shall file a notice of intent to do so in a form prescribed by the Office. The original and one copy of such notice shall be filed with the District Director. The activity or service may be commenced unless, before the close of the period specified immediately below, the District Director finds that the activity or service proposed would not be, under the circumstances, a proper incident to the operations of savings associations or would be detrimental to the interests of savings accountholders therein, or unless the District Director, upon notice to the applicant, refers the application to the Director of the Office because the proposed activity presents a significant issue of law or policy. The period for District Director review shall be 30 calendar days after the date of receipt of such notice, in the case of a de novo entry, or 60 calendar days, in the case of an acquisition of a going concern. If the District Director makes either finding within the applicable calendar-day period, the notice and finding(s) shall be forwarded immediately to the Senior Deputy Director for Supervision (Operations) for his or her review, and the activity or service may be commenced within the period specified immediately below unless the Senior Deputy Director for Supervision (Operations) concurs in the District Director's finding. The period for review by the Senior Deputy Director for Supervision (Operations) shall be 30 calendar days after the date of receipt of the notice and the District Director's finding(s) in the case of a de novo entry. or 60 calendar days in the case of an

acquisition of a going concern. The District Director or the Senior Deputy Director for Supervision (Operations) may extend the appropriate calendarday period for a period not to exceed 15 calendar days. The District Director or the Senior Deputy Director for Supervision (Operations) also may request additional information from such holding company or subsidiary after receipt of notice, but neither the District Director nor the Senior Deputy Director for Supervision (Operations) must consider additional information forthcoming from the holding company or subsidiary as a result of such a request if the information is received less than 10 calendar days before the end of the original or extended calendar-day period. The District Director or the Senior Deputy Director for Supervision (Operations) may permit such holding company or subsidiary to commence the activity at an earlier date. Where the District Director has referred an application to the Director of the Office because the application presents significant issues of law or policy, the Director of the Office will act on the application pursuant to the guidelines set forth at § 571.12 of this chapter.

(2) The Office may require a savings and loan holding company or subsidiary thereof which has commenced a service or activity pursuant to this section to modify or terminate, in whole or in part, such service or activity as the Office finds necessary in order to ensure compliance with the provisions and purposes of this part and of section 10 of the Home Owners' Loan Act, as amended, or to prevent evasions thereof.

(3) Except as may be otherwise provided in a resolution by or on behalf of the Office in a particular case, a service or activity commenced pursuant to this section shall not be altered in any material respect from that described in the notice filed under paragraph (c)(1) of this section, unless before making such alteration notice of intent to do so is filed in compliance with the appropriate procedures of said paragraph (c)(1) of this section.

(d) Service corporation subsidiaries of savings associations. The Office hereby approves without application the furnishing or performing of such services or engaging in such activities as permitted by the Office pursuant to 12 CFR 545.74, as in effect on March 5, 1987, if such service or activity is conducted by a service corporation subsidiary of a subsidiary savings association of a savings and loan holding company and if such service corporation has legal power to do so.

§ 584.2-2 Permissible bank holding company activities of savings and loan holding companies.

(a) General. For purposes of § 584.2(b)(6)(i) of this part, the services and activities permissible for bank holding companies pursuant to 12 CFR 225.23 or 225.25 are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: Provided, That no such savings and loan holding company or subsidiary thereof shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in this paragraph (a) without the prior approval of the Office pursuant to paragraph (b) of this section. Where an activity is within the scope of both § 584.2-1 of this part and this section, the procedures of § 584.2-1 of this part shall govern.

(b) Procedures for applications. Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the District Director with a copy to the Senior Deputy Director for Supervision (Operations). The District Director shall act upon such application pursuant to the guidelines set forth in 571.12 of this chapter unless, the District Director, upon notice to the applicant, refers the application to the Director of the Office because it raises issues of law or policy inappropriate for resolution by the District Director. Where the District Director has referred an application to the Director of the Office, the Director of the Office will act on such application pursuant to the guidelines set forth at § 571.12 of this chapter.

(c) Factors considered in acting on applications. In evaluating an application filed under paragraph (b) of this section, the District Director or the Director of the Office, as the case may be, shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

## § 524.3 Transactions with affiliates.

Transactions between savings association subsidiaries of savings and loan holding companies and their affiliates shall be governed by section 11 of the Home Owners' Loan Act, as amended, and section 304 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

## § 584.4 Prohibited acquisitions.

No savings and loan holding company, directly or indirectly, or through one or more subsidiaries or through one or more transactions, shall:

(a) Acquire by purchase or otherwise, or retain, more than five percent of the voting stock or shares of a savings association not a subsidiary, or of a savings and loan holding company not a subsidiary, nor, in the case of a multiple savings and loan holding company (other than a multiple savings and loan holding company described in § 584.2a(a)(ii) of this subchapter), acquire or retain more than five percent of the voting shares of any company not a subsidiary that is engaged in any business activity other than those specified in § 584.2(b) of this part: Provided, That this paragraph (a) shall not apply to voting shares of a savings association or of a savings and loan holding company-

(1) Held as a bona fide fiduciary (whether with or without the sole discretion to vote such shares);

(2) Held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) Held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(4) Acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding 3 years) as the Office may permit if, in the Office's judgment, such an extension would not be detrimental to the public interest;

(5) Acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act (or section 408(m) of the National Housing Act as in effect immediately prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(6) Held by any insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940: Provided, That all shares held by all insurance company affiliates of such savings association or savings and loan holding company may not in the aggregate exceed five percent of all outstanding shares or of the voting

power of the savings association or savings and loan holding company, and such shares are not acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding

company; and

(7) Shares acquired pursuant to a qualified stock issuance if such a purchase is approved pursuant to § 574.8 of this chapter; Provided, That the aggregate amount of shares held under this paragraph (a), (other than pursuant to paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(6)) may not exceed 15 percent of all outstanding shares or the voting power of a savings association or savings and loan holding company.

(b) Acquire control of an uninsured institution or retain, for more than one year after the date any savings association subsidiary becomes uninsured, control of such association.

#### § 584.5 Advance notice of proposed dividend declarations.

No subsidiary savings association of a savings and loan holding company may declare any dividend on its guaranty, permanent, or other nonwithdrawable stock without first giving to the Office not less than 30 days' advance notice of the proposed declaration by its directors of any such dividend. Such notice shall be in form prescribed by the Office in § 584.10(b) of this part and filed with the Office by transmitting the original and one copy to the District Director and by transmitting one copy to the Senior Deputy for Supervision (Operations), Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552. The 30-day notice period begins to run from the date of receipt of such notice by the District Director, who will promptly acknowledge such receipt in writing. Any such dividend declared within the 30-day notice period, or declared without first giving the notice required hereunder, is invalid and confers no rights or benefits upon any holder of such stock.

## § 584.6 Qualified thrift lender status.

(a) General test until June 30, 1991. (1) Until June 30, 1991, a savings association shall be a qualified thrift lender ("QTL") if the association's actual thrift investment percentage (as defined in paragraph (a)(5)(i) of this section) equals or exceeds 60 percent.

(2) As of January 1, 1988, a savings association shall be deemed to have QTL status and shall maintain its status as a QTL so long as the association's actual thrift investment percentage continues to equal or exceed 60 percent during three out of every four calendar

quarters in each of two out of every

three calendar years. For purposes of this paragraph (a), calculations of the actual thrift investment percentage shall be made on an average basis by taking the sum of an association's qualified thrift investments at the end of the calendar quarter being measured and at the end of each of the three immediately preceding months and dividing by the sum of the association's total tangible assets at the end of each of these same four months.

(3) An association shall lose its QTL status at the close of the quarter during which the association has failed to maintain its actual thrift investment percentage at or above 60 percent, which failure makes it mathematically impossible for the association to meet the 60 percent actual thrift investment percentage test during three out of every four calendar quarters for each of two out of every three calendar years on a continuous basis.

(4) For purposes of paragraph (a)(1) of this section, a de novo association shall begin a QTL measuring cycle (3 out of every 4 calendar quarters in 2 out of every 3 calendar years) at the beginning of the quarter following the date on which its charter was granted.

(5) Definitions. For purposes of determining whether a savings association is a qualified thrift lender for purposes of this paragraph (a), the following terms are defined as stated:

(i) Actual thrift investment percentage means the percentage determined by dividing the amount of a savings association's qualified thrift investments (as defined in paragraph (a)(5)(iii) of this section) by the total amount of the association's tangible assets (as defined in paragraph (a)(5)(ii) of this section).

(ii) Total tangible assets of an association means the total assets of the savings association minus goodwill and any other intangible assets, including, but not limited to, purchased deposit base and branch network, and leasehold improvements net of accumulated depreciation.

(iii) Subject to paragraph (a)(5)(iii)(D) of this section, qualified thrift investments means, with respect to any savings association, the sum of:

(A) The aggregate net amount of all investments (including loans, equity positions, or securities) held by such association (or any subsidiary of such association) that are related to domestic residential real estate or manufactured housing as defined in this paragraph

(B) The book value of property used by such association or subsidiary in the conduct of the business of such association or subsidiary: and

(C) An aggregate amount not to exceed 10 percent of such association's

tangible assets of:

(1) The liquid assets of the type required to be maintained under section 8 of the Home Owners' Loan Act (12 U.S.C. 1465) and set forth in 12 CFR 568.1 of this chapter, and

(2) 50 percent of the dollar amount of residential mortgage loans originated by the savings association or its subsidiary and sold within 90 days of origination, provided that these mortgage loans were sold during the calendar quarter for which the actual thrift investment percentage is being measured.

(D) In calculating the amount of qualified thrift investments held by an association and its subsidiaries under paragraph (a)(5)(iii) of this section, an association or its subsidiary may not count their investment in subsidiaries as a qualified thrift investment if they are also including their subsidiaries investments as qualified thrift investments.

(6) Housing related investments. For purposes of the definition contained in paragraph (a)(5)(iii)(A) of this section, investments (including such investments held subject to repurchase agreement) that are "related to domestic residential real estate or manufactured housing" include the following:

(i) Any home mortgage, as defined in 12 CFR 561.23, provided that the home or other dwelling unit is located in any

State:

(ii) Any loan made on the security of liens upon residential real estate located in any State, or any loan made for the repair, equipping, alteration, or improvement of any residential real property located in any State;

(iii) Any investment in manufactured home chattel paper and interests therein, where the underlying security is either manufactured, sold, or used in any State. "Manufactured home" and "manufactured home chattel paper" shall have the same definitions as contained in §§ 545.45 (a)(1) and 545.45 (a)(2) of this chapter;

(iv) Any investment in any property acquired through the liquidation or in foreclosure of investments described in paragraphs (a)(5)(i), (a)(5)(ii), and (a)(5)(iii) of this section; and any other equity interest investment in residential real estate or residential real property:

(v) Any investment in any state housing corporation as defined in § 571.8 of this chapter; in any obligations of or issued by any State or any political subdivision thereof that is issued for the purpose of providing financing for residential housing or incidental services; and in any community development loans or investments of the

type described in § 545.41 of this

(vi) Investments in the stock of a Federal Home Loan Bank, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; or obligations issued by the Corporation, the former Federal Savings and Loan Insurance Corporation, the Financing Corporation, the Resolution Trust Corporation or the Resolution Funding Corporation;

(vii) Investments in Federal Home Loan Bank certificates of deposit, deposit accounts (including overnight deposits), and other obligations of the

Federal Home Loan Banks;

(viii) Investments in the deposits of a Federal savings association, or in the deposits of a building and loan, savings and loan, or homestead association, or a cooperative bank, the accounts of which are insured by the SAIF;

(ix) Investments in mortgages, obligations, or other securities that are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454-55);

(x) Investments in obligations, participations, securities, or other instruments of, issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Government National

Mortgage Association;

(xi) Investments in any other mortgage-backed securities, including mortgage pass-through certificates, mortgage-backed bonds, and mortgage pay-through bonds, as well as any derivative mortgage-related security that is created by disaggregating and repackaging the cash flows to be received as payments on mortgages and traditional mortgage-backed securities provided that the underlying assets of such securities or bonds are domestic residential real estate assets;

(xii) Excess servicing rights resulting from the sale of residential mortgage loans as well as investments in the purchased rights to perform the servicing function for a specific group of residential mortgage loans that are

owned by others;

(xiii) Any investment in a corporation, partnership, or trust in proportion to the amount of gross revenues derived by such entity from servicing residential real estate loan portfolios, developing residential real estate housing located in any State, or any other domestic housing related activities such as residential loan origination or selling residential real estate loans.

(xiv) Any investment that the Senior Deputy Director for Supervision (Policy) hereafter identifies as a housing related investment for purposes of this

regulation.

For the purposes of this paragraph (a), the terms "residential real estate," and "residential real property" shall have the same definitions that are stated for these terms in section 5(c)(5) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(c)(5). The inclusion of any investment as a "qualified thrift investment" under this regulation is not intended to expand, contract, or otherwise affect the permissibility of investments as determined for any association under other relevant State and Federal statutes or regulations.

(7) Special phase-in for certain Federal savings associations. (i) Any Federal savings association in existence as a Federal savings association on August 9, 1989, that was chartered as a savings bank or a cooperative bank under State law before October 15, 1982, or whose principal assets were acquired from such a State savings bank or cooperative bank chartered before October 15, 1982, shall be deemed to have the status of a qualified thrift lender through August 9, 1995, Provided,

(A) The association's actual thrift investment percentage does not after August 9, 1989, decrease below the actual thrift investment percentage calculated for the association on July 15, 1989; and

(B) The amount by which-

(1) The actual thrift investment percentage of such association on the dates indicated in paragraph (a)(7)(ii) of this section exceeds

(2) The actual thrift investment percentage of such association on July 15, 1989, is equal to or greater than the applicable percentage (as indicated in paragraph (a)(7)(ii) of this section) of the amount by which 70 per cent exceeds the actual thrift investment percentage of such association on August 9, 1989.

(ii) The applicable percentages referenced in paragraph (a)(7)(i) of this section are 25 per cent on July 1, 1991; 50 per cent on January 1, 1993; 75 per cent on July 1, 1994; and 100 percent

thereafter.

(8) Exceptions. Notwithstanding paragraph (a)(1) of this section, the Director of the Office may grant such temporary and limited exceptions from the minimum actual thrift investment percentage requirement contained in paragraph (a)(1) of this section as the Director of the Office deems necessary

(i) The Director of the Office determines that extraordinary circumstances exist, such as when the effects of high interest rates reduce mortgage demand to such a degree that an insufficient opportunity exists for a savings association to meet such investment requirements; or

(ii) The Director of the Office

determines that -

(A) The grant of any such exception will significantly facilitate an acquisition under sections 13(c) or 13(k) of the Federal Deposit Insurance Act, as amended,

(B) The acquired association will comply with the transition requirements of paragraph (a)(7) of this section, as if the date of the exemption were the starting date for the transition period described in such paragraph, and

(C) The exemption will not have an undue adverse effect on competing savings associations in the relevant market and will further the purposes of the qualified thrift lender test.

(b) General test effective July 1, 1991. Effective July 1, 1991, an association's qualified thrift lender status shall be determined in accordance with section 10(m) of the Home Owners' Loan Act, as amended by section 303 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

(c) Restrictions applicable to savings associations that are not qualified thrift lenders. (1) Until August 9, 1990, a savings association that fails to maintain its status as a qualified thrift lender may receive advances from its Federal Home Loan Bank only to the extent permitted by section 10(e) of the Federal Home Loan Bank Act, 12 U.S.C. 1430(e), as amended by section 714 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. A holding company of any savings association that fails to maintain its status as a qualified thrift lender shall be subject to the provisions of § 584.2a(a)(2) of this part.

(2) Effective August 9, 1990, on the date a savings association fails to become or remain a qualified thrift lender, the savings association shall either become one or more banks (other than a savings bank), or be subject to the following restrictions:

(i) Activities. The savings association shall not make any new investments (including an investment in a subsidiary) or engage, directly or indirectly, in any other new activity unless that investment or activity would be permissible for the savings association if it were a national bank, and is also permissible for the savings association; Provided, however, beginning three years after the date on which the savings association should have become or ceases to be a qualified thrift lender the savings association shall not retain any investment

(including an investment in any subsidiary) or engage, directly or indirectly, in any activity unless that investment or activity would be permissible for the savings association if it were a national bank and is also permissible for the savings association as a savings association;

(ii) Branching. The savings association shall not establish any new branch office at any location at which a national bank located in the savings association's home State may not establish a branch office. For purposes of this paragraph (c)(2)(ii), a savings association's home State is the State in which the savings association's total deposits were largest on the date on which the savings association should have become or ceased to be a qualified thrift lender;

(iii) Advances. The savings association shall not be eligible to obtain new advances from any Federal Home Loan Bank; Provided, however, beginning three years after the date on which the savings association should have become or ceases to be a qualified thrift lender, the savings association shall repay any outstanding advances from any Federal Home Loan Bank as promptly as can be prudently done consistent with the safe and sound operation of the savings association; and

(iv) Dividends. The savings association shall be subject to all statutes and regulations governing the payment of dividends by a national bank in the same manner and to the same extent as if the savings association were a national bank.

(3) Requalification. (i) Until June 30. 1991, a savings association that should have become or ceases to be a qualified thrift lender shall not be subject to paragraph (c)(2) of this section if the savings association becomes a qualified thrift lender by meeting the qualified thrift lender requirement on an average basis in 3 cut of every 4 quarters and 2 out of every 3 years and thereafter remains a qualified thrift lender.

(ii) Effective July 1, 1991, a savings association that should have become or ceases to be a qualified thrift lender shall not be subject to paragraph (c)(2) of this section, if the savings association becomes a qualified thrift lender pursuant to section 10(m)(3)(D) of the Home Owners' Loan Act, as amended by section 303 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

(iii) If the savings association (or any savings association that acquired all or substantially all of its assets from that savings association) at any time after requalification as provided for in paragraph (c)(3)(i) or (c)(3(ii) of this section ceases to be a qualified thrift lender, it shall immediately be subject to all provisions of paragraph (c)(2) of this section and § 584.2a(a)(2) of this part, as if all the periods described in such provisions had expired.

(4) Deposit insurance assessments. Any bank chartered as a result of the requirements of this section shall be obligated until December 31, 1993, to pay the SAIF the assessments on savings associations under the Federal Deposit Insurance Act. Such association shall also be assessed, on the date of its change of status as a SAIF-insured association, the exit fee and entrance fee provided in section 5(d) of the Federal Deposit Insurance Act. Such association shall not be obligated to pay the assessments assessed on banks under the Federal Deposit Insurance Act until December 31, 1993, or the association's change of status from a SAIF-insured association to a BIFinsured association, whichever is later.

(5) Exemptions—(i) For specialized savings association serving transient military personnel. Paragraph (c)(2) of this section shall not apply to a savings association subsidiary of a savings and loan holding company if the savings and loan holding company is a reciprocal interinsurance exchange that acquired centrol of the savings association before January 1, 1984, and at least 90 percent of the customers of the savings and loan holding company and its subsidiaries and affiliates are active or former officers in the United States military services or the widows, widowers, divorced spouses, or current or former dependents of such officers.

(ii) For certain Federal savings associations. Paragraph (c)(2) of this section shall not apply to any Federal savings association in existence as a Federal savings association on August 9, 1989, that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law or that acquired its principal assets from an association that was chartered before October 15, 1982, as a savings bank or a cooperative bank under State law.

(6) Special rules for Puerto Rico and Virgin Islands savings associations. The restrictions of paragraph (c)(2) of this section shall not become effective until July 1, 1991, with respect to any savings association headquartered and operating primarily in Puerto Rico or the Virgin Islands.

#### § 584.9 Prohibited acts.

(a) Control of mutual savings association. No savings and loan

holding company or any subsidiary thereof, or any director, officer, or employee of a savings and loan holding company or subsidiary thereof, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares of such holding company or subsidiary, may hold, solicit, or exercise any proxies in respect of any voting rights in a mutual savings association.

(b) Management interlocks. No director or officer of a savings and loan holding company, or any person owning controlling, or holding with power to vote, or holding proxies representing more than 25 percent of the voting shares of such holding company may acquire control of any savings association not a subsidiary of such savings and loan holding company, unless such acquisition is approved by the Office pursuant to § 574.3(a) of this chapter.

(c) Convicted persons. No individual who has been convicted of any criminal offense involving dishonesty or breach of trust may serve or act as a director, officer, or trustee of, or become a partner in, any savings and loan holding company, except with the prior written

approval of the Office.

(d) Applications for approval.

Applications for an approval under pargraph (c) of this section shall contain a full statement of the reasons in support thereof. Such applications shall be filed with the Office by transmitting the original and one copy to the Senior Deputy Director for Supervision (Operations), Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and one copy to the District Director.

## § 584.10 Statements, applications, reports and notices to be filed.

(a) Registration statements and annual reports for savings and loan holding companies under § 584.1—(1) Registration Statements. (i) H-(b)10. This statement shall be used for registration by every savings and loan holding company, including subsidiary savings and loan holding companies, except trusts (other than a business trust) and savings and loan holding companies which file H-(b)3, H-(b)4, or H-(b)5 registration statements.

(ii) H-(b)3. Corporation as trustee of a trust. This statement (rather than H-(b)10) shall be used for registration by any company which is a savings and loan holding company by virtue of its control, in a trustee capacity, of a

savings association.
(iii) H-(b)4. Creditor as savings and

loan holding company. This statement (rather than H-(b)10) may be used for registration by any company which is a creditor and is a savings and loan holding company only by virtue of the acquisition of control of a savings association or another savings and loan holding company pursuant to a pledge or hypothecation to secure a loan, or in connection with the liquidation of a loan, made in the ordinary course of business.

- (iv) H-(b)5. Voting trust as savings and loan holding company. This statement (rather than H-(b)10) shall be used for registration by any voting trust which is a savings and loan holding company by virtue of its control of a savings association or another savings and loan holding company.
- (2) Annual Report—H-(b)11. This report shall be used by every registered savings and loan holding company, including subsidiary savings and loan holding companies, except trusts (other than business trusts) and savings and loan holding companies filing H-(b)3, H-(b)4, and H-(b)5 registration statements.
- (3) *H*–(*b*)12. This report shall be used by every registered savings and loan holding company which is required to file an H–(b)11.
- (b) H-(f).—Notice of proposed dividend declaration under § 584.5. This notice shall be filed by a subsidiary savings association for the purpose of giving the Office advance notice of the proposed declaration of any dividend on its guaranty, permanent, or other nonwithdrawable stock.

## § 584.11 Hearings.

Any person who has made an application or petition to the Office pursuant to any provision of this subchapter may request a hearing thereon if such application or petition has been denied or disapproved, in whole or part, by the Office. At any time after the filing of any such application or petition and before consideration thereof by the Office, any interested person may request a hearing upon such application or petition. The Office may order a hearing in connection with the consideration of any matter arising under any provision of the regulations in this subchapter whether or not any request therefor has been made by any person. The Director of the Office may deny any request for, or dispense with, any hearing for which this section provides when, in his or her judgment, no need therefor exists.

## SUBCHAPTER G—REGULATIONS FOR FEDERALLY-RELATED MORTGAGE LOANS

## PART 590—PREEMPTION OF STATE USURY LAWS

Sec.

590.1 Authority, purpose, and scope,

590.2 Definitions.

590.3 Operation.

590.4 Consumer protection rules for federally-related loans, mortgages, credit sales and advances secured by first liens on residential mobile homes.

590.100 Status of Interpretations issued under Public Law 96–161.590.101 State criminal usury statutes.

Authority: Sec. 501, 94 Stat. 161, as amended (12 U.S.C. 1735f-7).

## § 590.1 Authority, purpose, and scope.

- (a) Authority. This part contains regulations issued under section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96–221, 94 Stat. 161.
- (b) Purpose and scope. The purpose of this permanent preemption of state interest-rate ceilings applicable to Federally-related residential mortgage loans is to ensure that the availability of such loans is not impeded in states having restrictive interest limitations. This part applies to loans, mortages, credit sales, and advances, secured by first liens on residential real property, stock in residential cooperative housing corporations, or residential manufactured homes as defined in § 590.2 of this part.

## § 590.2 Definitions.

For the purposes of this part, the following definitions apply:

- (a) Loans mean any loans, mortgages, credit sales, or advances.
- (b) Federally-related loans include any loan:
- (1) Made by any lender whose deposits or accounts are insured by any agency of the Federal government;
- (2) Made by any lender regulated by any agency of the Federal government;
- (3) Made by any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;
- (4) Made in whole or in part by the Secretary of Housing and Urban Development; insured, guaranteed, supplemented, or assisted in any way by the Secretary or any officer or agency of the Federal government, or made under or in connection with a housing or urban development program administered by the Secretary, or a housing or related program administered by any other such officer or agency;

(5) Eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or made by any financial institution from which the loan could be purchased by the Federal Home Loan Mortgage Corporation; or

(6) Made in whole or in part by any

entity which:

(i) Regularly extends, or arranges for the extension of, credit payable by agreement in more than four installments or for which the payment of a finance charge is or may be required;

(ii) Makes or invests in residential real property loans, including loans secured by first liens on residential manufactured homes that aggregate more than \$1,000,000 per year; except that the latter requirement shall not apply to such an entity selling residential manufactured homes and providing financing for such sales through loans or credit sales secured by first liens on residential manufactured homes, if the entity has an arrangement to sell such loans or credit sales in whole or in part, or where such loans or credit sales are sold in whole or in part, to a lender or other institution otherwise included in this section.

(c) Loans which are secured by first liens on real estate means loans on the security of any instrument (whether a mortgage, deed of trust, or land contract) which makes the interest in real estate (whether in fee, or in a leasehold or subleasehold extending, or renewable, automatically or at the option of the holder or the lender, for a period of at least 5 years beyond the maturity of the loan) specific security for the payment of the obligation secured by the instrument: Provided, That the instrument is of such a nature that, in the event of default, the real estate described in the instrument could be subjected to the satisfaction of the obligation with the same priority as a first mortgage of a first deed of trust in the jurisdiction where the real estate is located.

(d) Loans secured by first liens on stock in a residential cooperative housing corporation means loans on the

security of:

(1) A first security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization; and

(2) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(e) Loans secured by first liens on residential manufactured homes means

a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home which will have priority over any conflicting security interest.
(f) Residential real property means

real estate improved or to be improved by a structure or structures designed primarily for dwelling, as opposed to

commercial use.

(g) Residential manufactured home shall mean a manufactured home as defined in the National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5402(6), which is or will be used as a residence.

(h) State means the several states, Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, except as provided in section 501(a)(2)(B) of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. 96-221, 94 Stat. 181.

#### § 590.3 Operation.

(a) The provisions of the constitution or law of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any Federally-related loan:

(1) Made after March 31, 1980; and (2) Secured by a first lien on:

(i) Residential real property;

(ii) Stock in a residential cooperative housing corporation when the loan is used to finance the acquisition of such stock: or

(iii) A residential manufactured home: Provided, That the loan so secured contains the consumer safeguards required by § 590.4 of this part;

(b) The provisions of paragraph (a) of this section shall apply to loans made in any state on or before the date (after April 1, 1980 and prior to April l, 1983) on which the state adopts a law or certifies that the voters of such state have voted in favor of any law, constitutional or otherwise, which states explicitly and by its terms that such state does not want the provisions of paragraph (a) of this section to apply with respect to loans made in such state, except that-

(1) The provisions of paragraph (a) of this section shall apply to any loan which is made after such date pursuant to a commitment therefore which was entered into during the period beginning on April 1, 1980, and ending on the date the state takes such action;

(2) The provisions of paragraph (a) of this section shall apply to any rollover of a loan which loan was made, or

committed to be made, during the period beginning on April 1, 1980, and ending on the date the state takes such action, if the mortgage document or loan note provided that the interest rate to the original borrower could be changed through the use of such a rollover; and

(3) At any time after the date of adoption of these regulations, any state may adopt a provision of law placing limitations on discount points or such other charges on any loan described in

this part.

(c) Nothing in this section preempts limitation in state laws on prepayment charges, attorneys' fees, late charges or other provisions designed to protect borrowers.

§ 590.4 Consumer protection rules for federally-related loans, mortgages, credit sales and advances secured by first liens on residential mobile homes.

(a) Definitions. As used in this

(1) Prepayment. A "prepayment" occurs upon-

(i) Refinancing or consolidation of the indebtedness;

(ii) Actual prepayment of the indebtedness by the debtor, whether voluntarily or following acceleration of the payment obligation by the creditor;

(iii) The entry of a judgment for the indebtedness in favor of the creditor.

(2) Actuarial method. The term actuarial method means the method of allocating payments made on a debt between the outstanding balance of the obligation and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation.

(3) Precomputed Finance Charge. The term precomputed finance charge means interest or a time/price differential as computed by the add-on or discount method. Precomputed finance charges do not include loan fees, points, finder's

fees, or similar charges.

(4) Creditor. The term creditor means any entity covered by this part, including those which regularly extend or arrange for the extension of credit and assignees that are creditors under section 501(a)(1)(C)(v) of the Depository Institutions Deregulation and Monetary Control Act of 1980.

(b) General. (1) The provisions of the constitution or the laws of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage,

credit sale, or advance which is secured by a first lien on a residential mobile home if a creditor covered by this part complies with the consumer protection regulations of this section.

(2) Relation to state law. (i) In making loans or credit sales subject to this section, creditors shall comply with state and Federal law in accordance

with the following:

(A) State law regulating matters not covered by this section. When state law regulating matters not covered by this section is otherwise applicable to a loan or credit sale subject to this section, creditors shall comply with such state law provisions.

(B) State law regulating matters covered by this section. Creditors need comply only with the provisions of this section, unless the Office determines that an otherwise applicable state law regulating matters covered by this section provides greater protection to consumers. Such determinations shall be published in the Federal Register and shall operate prospectively.

(ii) Any interested party may petition the Office for a determination that state law requirements are more protective of consumers than the provisions of this section. Petitions shall be sent to: Secretary to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and shall

include:

(A) A copy of the state law to be considered;

(B) Copies of any relevant judicial, regulatory, or administrative interpretations of the state law; and

(C) An opinion or memorandum from the state Attorney General or other appropriate state official having primary enforcement responsibilities for the subject state law provision, indicating how the state law to be considered offers greater protection to consumers

than the Office's regulation.

(c) Refund of precomputed finance charge. In the event the entire indebtedness is prepaid, the unearned portion of the precomputed finance charge shall be refunded to the debtor. This refund shall be in an amount not less than the amount which would be refunded if the unearned precomputed finance charge were calculated in accordance with the actuarial method, except that the debtor shall not be entitled to a refund which, is less than one dollar. The unearned portion of the precomputed finance charge is, at the option of the creditor, either:

[1] That portion of the precomputed

(1) That portion of the precomputed finance charge which is allocable to all unexpired payment periods as originally scheduled, or if deferred, as deferred. A payment period shall be deemed

unexpired if prepayment is made within 15 days after the payment period's scheduled due date. The unearned precomputed finance charge is the total of that which would have been earned for each such period had the loan not been precomputed, by applying to unpaid balances of principal, according to the actuarial method, an annual percentage rate based on those charges which are considered precomputed finance charges in this section, assuming that all payments were made as originally scheduled, or as deferred, if deferred. The creditor, at its option, may round this annual percentage rate to the nearest one-quarter of one percent; or

(2) The total precomputed finance charge less the earned precomputed finance charge. The earned precomputed finance charge shall be determined by applying an annual percentage rate based on the total precomputed finance charge (as that term is defined in this section), under the actuarial method, to the unpaid balances for the actual time those balances were unpaid up to the date of prepayment. If a late charge or deferral fee has been collected, it shall be treated as a payment.

(d) Prepayment penalties. A debtor may prepay in full or in part the unpaid balance of the loan at any time without penalty. The right to prepay shall be disclosed in the loan contract in type larger than that used for the body of the

document.

(e) Balloon payments—(1) Federal savings associations. Federal savings association creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residential manufactured homes, and such loans shall be governed by the provisions of this section and § 545.33(I) of this chapter.

(2) Other creditors. All other creditors may enter into agreements with debtors which provide for non-amortized and partially-amortized loans on residential manufactured homes to the extent authorized by applicable Federal or

state law or regulation.

(f) Late charges. (1) No late charge may be assessed, imposed, or collected unless provided for by written contract between the creditor and debtor.

(2) To the extent that applicable state law does not provide for a longer period of time, no late charge may be collected on an installment which is paid in full on or before the 15th day after its scheduled or deferred due date even though an earlier maturing installment or a late charge on an earlier installment may not have been paid in full. For purposes of assessing late charges,

payments received are deemed to be applied first to current installments.

- (3) A late charge may be imposed only once on an installment; however, no such charge may be collected for a late installment which has been deferred.
- (4) To the extent that applicable state law does not provide for a lower charge or longer grace period, a late charge on any installment not paid in full on or before the 15th day after its scheduled or deferred due date may not exceed the lesser of \$5.00 or five percent of the unpaid amount of the installment.

(5) If, at any time after imposition of a late charge, the lender provides the borrower with written notice regarding amounts claimed to be due but unpaid, the notice shall separately state the total

of all late charges claimed.

(6) Interest after the final scheduled maturity date may not exceed the maximum rate otherwise allowable under State law for such contracts, and if such interest is charged, no separate late charge may be made on the final scheduled installment.

(g) Deferral fees. (1) With respect to mobile home credit transactions containing precomputed finance charges, agreements providing for deferral of all or part of one or more installments shall be in writing, signed

by the parties, and

- (i) Provide, to the extent that applicable state law does not provide for a lower charge, for a charge not exceeding one percent of each installment or part thereof for each month from the date when such installment was due to the date when it is agreed to become payable and proportionately for a part of each month, counting each day as 1/30th of a month;
- (ii) Incorporate by reference the transaction to which the deferral applied;
- (iii) Disclose each installment or part thereof in the amount to be deferred, the date or dates originally payable, and the date or dates agreed to become payable: and
- (iv) Set forth the fact of the deferral charge, the dollar amount of the charge for each installment to be deferred, and the total dollar amount to be paid by the debtor for the privilege of deferring payment.
- (2) No term of a writing executed by the debtor shall constitute authority for a creditor unilaterally to grant a deferral with respect to which a charge is to be imposed or collected.
- (3) The deferral period is that period of time in which no payment is required or made by reason of the deferral.

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(4) Payments received with respect to deferred installments shall be deemed to be applied first to deferred installments.

(5) A charge may not be collected for the deferral of an installment or any part thereof if, with respect to that installment, a refinancing or consolidation agreement is concluded by the parties, or a late charge has been imposed or collected, unless such late charge is refunded to the borrower or credited to the deferral charge.

(h) Notice before repossession, foreclosure, or acceleration. (1) Except in the case of abandonment or other extreme circumstances, no action to repossess or foreclose, or to accelerate payment of the entire outstanding balance of the obligation, may be taken against the debtor until 30 days after the creditor sends the debtor a notice of default in the form set forth in paragraph (h)(2) of this section. Such notice shall be sent by registered or certified mail with return receipt requested. In the case of default on payments, the sum stated in the notice may only include payments in default and applicable late or deferral charges. If the debtor cures the default within 30 days of the postmark of the notice and subsequently defaults a second time, the creditor shall again give notice as described in this paragraph (h)(1). The debtor is not entitled to notice of default more than twice in any one-year period.

(2) The notice in the following form shall state the nature of the default, the action the debtor must take to cure the default, the creditor's intended actions upon failure of the debtor to cure the default, and the debtor's right to redeem

under state law.

To: Date:

Notice of Default and Right to Cure Default

Name, address, and telephone number of creditor

Account number, if any Brief identification of credit transaction You are now in default on this credit transaction. You have a right to correct this default within 30 days from the

postmarked date of this notice. If you correct the default, you may continue with the contract as though you did not default. Your default consists of:

## Describe default alleged

Cure of default: Within 30 days from the postmarked date of this notice, you may cure your default by (describe the acts necessary for cure, including, if applicable, the amount of payment required, including itemized delinquency or deferral charges).

Creditor's rights: If you do not correct your default in the time allowed, we may exercise our rights against you under the law by (describe action creditor intends

to take).

If you have any questions, write (the creditor) at the above address or call (creditor's designated employee) at (telephone number) between the hours of on (state days of week).

If this default was caused by your failure to make a payment or payments, and you want to pay by mail, please send a check or money order; do not send cash.

#### § 590.100 Status of Interpretations Issued under Public Law 96-161.

The Office continues to adhere to the views expressed in the formal Interpretations issued under the authority of section 105(c) of Pub. L. 96-161, 93 Stat. 1233 (1979). These interpretations, which relate to the temporary preemption of state interest ceilings contained in Pub. L. 98-161, may be found at 45 FR 2840 (Jan. 15, 1980); 45 FR 6165 (Jan. 25, 1980); 45 FR 8000 (Feb. 6, 1980); 45 FR 15921 (Mar. 12, 1980).

## § 590.101 State criminal usury statutes.

(a) Section 501 provides that "the provisions of the constitution or laws of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges shall not apply to any" federally-related loan secured by a first lien on residential real property, a residential manufactured home, or all the stock allocated to a dwelling unit in a residential housing cooperative. 12 U.S.C. 1735f-7 note (Supp. IV 1980). The question has arisen as to whether the federal statute preempts a state law which deems it a criminal offense to charge interest at a rate in excess of that specified in the state law

(b) In the Office's view, section 501 preempts all state laws which expressly limit the rate or amount of interest chargeable on a federally-related residential first mortgage. It does not matter whether the statute in question imposes criminal or civil sanctions: section 501, by its terms, preempts "any" state law which imposes a ceiling on interest rates. The wording of the federal statute clearly expresses an intent to displace all direct state law restraints on interest. Any state law that conflicts with this Congressional purpose must yield.

## PART 591—PREEMPTION OF STATE **DUE-ON-SALE LAWS**

Authority, purpose, and scope. 591.1

Definitions. 591.2

Loans originated by Federal savings associations.

591.4 Loans originated by lenders other than Federal savings associations.

591.5 Limitations on exercise of due-on-sale clauses.

591.6 Interpretations.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 341, 96 Stat. 1505, as amended (12 U.S.C. 1701j-3).

## § 591.1 Authority, purpose, and scope.

(a) Authority. This part contains regulations issued under section 5 of the Home Owners' Loan Act of 1933, as amended, and under section 341 of the **Garn-St Germain Depository Institutions** Act of 1982, Pub. L. 97-320, 96 Stat. 1469, 1505-1507.

(b) Purpose and scope. The purpose of this permanent preemption of state prohibitions on the exercise of due-onsale clauses by all lenders, whether federally- or state-chartered, is to reaffirm the authority of Federal savings associations to enforce due-on-sale clauses, and to confer on other lenders generally comparable authority with respect to the exercise of such clauses. This part applies to all real property loans, and all lenders making such loans, as those terms are defined in § 591.2 of this part.

#### 591.2 Definitions.

For the purposes of this part, the following definitions apply:

(a) Assumed includes transfers of real property subject to a real property loan by assumptions, installment land sales contracts, wraparound loans, contracts for deed, transfers subject to the mortgage or similar lien, and other like transfers."Completed credit application" has the same meaning as completed application for credit as provided in § 202.2(f) of this title.

(b) Due-on-sale clause means a contract provision which authorizes the lender, at its option, to declare immediately due and payable sums secured by the lender's security instrument upon a sale of transfer of all or any part of the real property securing the loan without the lender's prior written consent. For purposes of this definition, a sale or transfer means the conveyance of real property of any right, title or interest therein, whether legal or equitable, whether voluntary or involuntary, by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three years, lease-option contract or any other method of conveyance of real property interests.

(c) Federal savings association has the same meaning as provided in § 541.11 of this chapter.

(d) Federal credit union means a credit union chartered under the Federal Credit Union Act.

(e) Home has the same meaning as provided in § 541.14 of this chapter.

(f) Savings association has the same meaning as provided in § 561.43 of this

(g) Lender means a person or government agency making a real property loan, including without limitation, individuals, Federal savings associations, state-chartered savings associations, national banks, statechartered banks and state-chartered mutual savings banks, Federal credit unions, state-chartered credit unions, mortgage banks, insurance companies and finance companies which make real property loans, manufactured-home retailers who extend credit, agencies of the Federal government, any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act, and any assignee or transferee, in

agencies.

(h) Loan secured by a lien on real property means a loan on the security of any instrument (whether a mortgage, deed or trust, or land contract) which makes the interest in real property (whether in fee, or in a leasehold or subleasehold) specific security for the payment of the obligation secured by the

whole or part, of any such persons or

instrument.

(i) Loan secured by a lien on stock in a residential cooperative housing corporation means a loan on the security of:

(1) A security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization; and

(2) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(j) Loan secured by a lien on a residential manufactured home, whether real or personal property, means a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home.

(k) Loan originated by a Federal savings association or other lender means any loan for which the lender makes the first advance of credit thereunder, provided, That such lender then held a beneficial interest in the loan, whether as to the whole loan or a portion thereof, and whether or not the loan is later held by or transferred to another lender.

(!) Real property loan means any loan, mortgage, advance or credit sale secured by a lien on real property, the stock or membership certificate allocated to a dwelling unit in a cooperative housing corporation, or a

residential manufactured home, whether real or personal property.

(m) Residential manufactured home has the same meaning as provided in § 590.2(g) of this subchapter.

(n) Reverse mortgage means an instrument providing periodic payments to homeowners based on accumulated equity, whether the payments are made directly by the lender, through purchase of an annuity through an insurance company or in any other manner. The loan may be due either upon a specific date or when a specified event occurs, such as the sale of the property or death of the borrower.

(c) State means the several states, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, the Virgin Islands, and American

Samoa.

(p)(1) A window-period loan means a real property loan, not originated by a Federal savings association, which was made or assumed during a window-period created by state law and subject to that law, which loan was recorded, at the time of origination or assumption, before October 15, 1982, or within 60 days thereafter (December 14, 1982).

(2) The window-period begins on:
(i) The date a state adopted a law (by means of a constitutional provision or statute) prohibiting the unrestricted exercise of due-on-sale clauses upon outright transfers of property securing loans subject to the state law creating the window-period, or the effective date of a constitutional or statutory provision so adopted, whichever is later; or

(ii) The date on which the highest court of the state rendered a decision prohibiting such unrestricted exercise (or if the highest court has not so decided, the date on which the next highest appellate court rendered a decision resulting in a final judgment which applies statewide), and ends on the earlier of the date such state law prohibition terminated under state law or October 15, 1982.

(3) Categories of state law which create window-periods by prohibiting the unrestricted exercise of due-on-sale clauses upon outright transfers of property securing loans subject to such state law restrictions include laws or judicial decisions which permit the lender to exercise its option under a due-on-sale clause only where:

(i) The lender's security interest or the likelihood of repayment is impaired; or

(ii) The lender is required to accept an assumption of the existing loan without an interest-rate change or with an interest-rate change below the market interest rate currently being offered by the lender on similar loans secured by

similar property at the time of the transfer.

§ 591.3 Loans originated by Federal savings associations.

(a) With regard to any real property loan originated or to be originated by a Federal savings association, as a matter of contract between it and the borrower, a Federal savings association continues to have the power to include a due-on-sale clause in its loan instrument.

(b) Except as otherwise provided in § 591.5 of this part with respect to any such loan made on the security of a home occupied or to be occupied by the borrower, exercise by any lender of a due-on-sale clause in a loan originated by a Federal savings association shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the lender and borrower shall at all times be fixed and governed by that contract.

## § 591.4 Loans originated by lenders other than Federal savings associations.

(a) With regard to any real property loan originated by a lender other than a Federal savings association, as a matter of contract between it and the borrower, the lender has the power to include a due on sale clause in its loan instrument.

(b) Except as otherwise provided in paragraph (c) of this section and § 591.5 of this part, the exercise of due-on-sale clauses in loans originated by lenders other than Federal savings associations shall be governed exclusively by the terms of the loan contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by that contract.

(c)(1) In the case of a window-period loan, the provisions of paragraph (b) of this section shall apply only in the case of a sale or transfer of the property subject to the real property loan and only if such sale or transfer occurs on or after October 15, 1985: Provided, That:

(i) With respect to real property loans originated in a state by lenders other than national banks, Federal savings associations, and Federal credit unions, a state may otherwise regulate such contracts by state law enacted prior to October 16, 1985, in which case paragraph (b) of this section shall apply only if such state law so provides; and

(ii) With respect to real property loans originated by national banks and Federal credit unions, the Comptroller of the Currency or the National Credit Union Administration Board, respectively, may otherwise regulate such contracts by regulations promulgated prior to October 16, 1985, in which case paragraph (b) of this section

shall apply only if such regulation so

provides.

(2) A lender may not exercise its options pursuant to a due-on-sale clause contained in a window-period loan in the case of a sale or transfer of property securing such loan where the sale or transfer occurred prior to October 15, 1982.

(d)(1) Prior to the sale or transfer of property securing a window-period loan subject to the provisions of paragraph

(c) of this section.

(i) Any lender in the business of making real property loans may require any successor or transferee of the borrower to supply credit information customarily required by the lender in connection with credit applications, to complete its customary credit application, and to meet customary credit standards applied by such lender, at the date of sale or transfer, to the lender's similar loans secured by similar property.

(ii) Any lender not in the business of making loans may require any successor or transferee of the borrower to meet credit standards customarily applied by other similarly situated lenders or sellers in the geographic market within which the transaction occurs, for similar loans secured by similar property, prior to the lender's consent to the transfer.

(2) The lender may exercise a due-onsale clause in a window-period loan if:

(i) The successor or transferee of the borrower fails to meet the lender's credit standards as set forth in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; or

(ii) Upon transfer of the security property and not later than fifteen days after written request by the lender, the successor or transferee of the borrower fails to provide information requested by the lender pursuant to paragraph (d)(1)(i) or (d)(1)(ii) of this section, to determine whether such successor or transferee of the borrower meets the lender's customary credit standards.

(3) The lender shall, within thirty days of receipt of a completed credit application and any other related information provided by the successor or transferee of the borrower, determine whether such successor or transferee meets the customary credit standards of the lender and provide written notice to the successor or transferee of its decision, and the reasons in the event of a disapproval. Failure of the lender to provide such notice shall preclude the lender from exercise of its due-on-sale clause upon the sale or transfer of the property securing the loan.

(4) The lender's right to exercise a due-on-sale clause pursuant to this paragraph (d)(4) is in addition to any other rights afforded the lender by state

law regulating window-period loans with regard to the exercise of due-onsale clauses and loan assumptions.

## § 591.5 Limitation on exercise of due-on-sale clauses.

(a) General. Except as provided in \$\$ 591.4 (c) and (d)(4) of this part, dueon-sale practices of Federal savings associations and other lenders shall be governed exclusively by the Office's regulations, in preemption of and without regard to any limitations imposed by state law on either their inclusion or exercise including, without limitation, state law prohibitions against restraints on alienation, prohibitions against penalties and forfeitures, equitable restrictions and state law dealing with equitable transfers.

(b) Specific limitations. With respect to any loan on the security of a home occupied or to be occupied by the

borrower.

 A lender shall not (except with regard to a reverse mortgage) exercise its option pursuant to a due-on-sale

clause upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property: Provided, That such lien or encumbrance is not created pursuant to a contract for deed;

(ii) The creation of a purchase-money security interest for household

appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest which has a term of three years or less and which does not contain an option to purchase (that is, either a lease of more than three years or a lease with an option to purchase will allow the exercise of a due-on-sale clause);

(v) A transfer, in which the transferee is a person who occupies or will occupy

the property, which is:

(A) A transfer to a relative resulting from the death of the borrower;

(B) A transfer where the spouse or child(ren) becomes an owner of the

property; or

(C) A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or

(vi) A transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property, unless, as a condition precedent to such transfer, the borrower refuses to provide the lender with reasonable means acceptable to the lender by which the lender will be assured of timely notice of any subsequent transfer of the beneficial interest or change in occupancy.

(2) A lender shall not impose a prepayment penalty or equivalent fee when the lender or party acting on behalf of the lender

(i) Declares by written notice that the loan is due pursuant to a due-on-sale clause or

(ii) Commences a judicial or nonjudicial foreclosure proceeding to enforce a due-on-sale clause or to seek payment in full as a result of invoking such clause.

(3) A lender shall not impose a prepayment penalty or equivalent fee when the lender or party acting on behalf of the lender fails to approve within 30 days the completed credit application of a qualified transferee of the security property to assume the loan in accordance with the terms of the loan, and thereafter the borrower transfers the security property to such transferee and prepays the loan in full within 120 days after receipt by the lender of the completed credit application. For purposes of this paragraph (b)(3), a qualified transferee is a person who qualifies for the loan under the lender's applicable underwriting standards and who occupies or will occupy the security property.

(4) A lender waives its option to exercise a due-on-sale clause as to a specific transfer if, before the transfer, the lender and the existing borrower's prospective successor in interest agree in writing that the successor in interest will be obligated under the terms of the loan and that interest on sums secured by the lender's security interest will be payable at a rate the lender shall request. Upon such agreement and resultant waiver, a lender shall release the existing borrower from all obligations under the loan instruments, and the lender is deemed to have made a new loan to the existing borrower's successor in interest. The waiver and release apply to all loans secured by homes occupied by borrowers made by a Federal savings association after July 31, 1976, and to all loans secured by homes occupied by borrowers made by other lenders after the effective date of this regulation.

(5) Nothing in paragraph (b)(1) of this section shall be construed to restrict a lender's right to enforce a due-on-sale clause upon the subsequent occurrence of any event which disqualifies a transfer for a previously-applicable exception under that paragraph (b)(1).

(c) Policy considerations. Paragraph
(b) of this section does not prohibit a
lender from requiring, as a condition to
an assumption, continued maintenance
of mortgage insurance by the existing
borrower's successor in interest,
whether by endorsement of the existing
policy or by entrance into a new
contract of insurance.

## § 591.6 Interpretations.

The Office periodically will publish Interpretations under section 341 of the Garn-St Germain Depository Institutions Act of 1982, Pub. I., 97–320, 96 Stat. 1469, 1505–1507, in the Federal Register in response to written requests sent to the Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

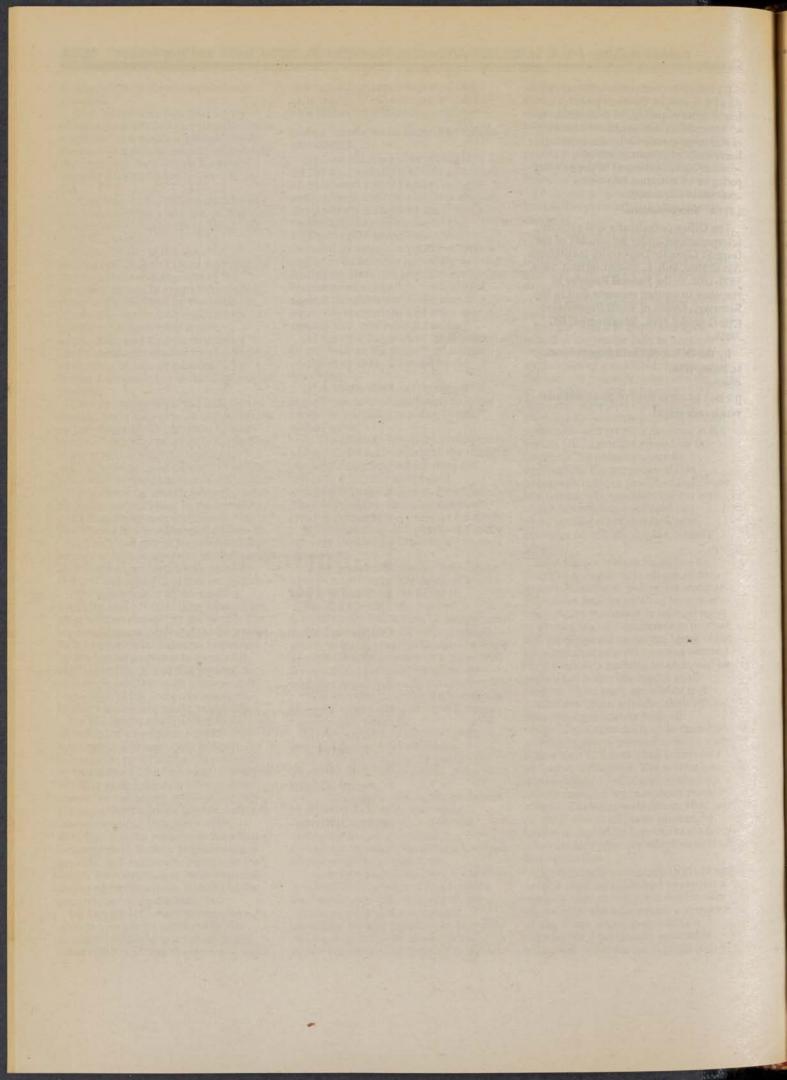
By the Office of Thrift Supervision.

M. Danny Wall,

Director

[FR Doc. 89-26716 Filed 11-29-89; 8:45 am]

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Thursday November 30, 1989



# Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 435

Energy Conservation Voluntary
Performance Standards for New
Commercial and Multi-Family High Rise
Residential Buildings; Mandatory for New
Federal Buildings; Preliminary Statement
of Reasons for Adoption of Standby
Loss Criteria



#### **DEPARTMENT OF ENERGY**

Office of Conservation and Renewable Energy

10 CFR Part 435

[Docket No. CAS-RM-79-112-C]

**Energy Conservation Voluntary** Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings; Mandatory for **New Federal Buildings** 

AGENCY: U.S. Department of Energy. **ACTION: Preliminary Statement of** Reasons for Adoption of Standby Loss Criteria.

SUMMARY: Pursuant to the October 6, 1989, Memorandum and Order of the United States District Court for the District of Columbia in Civil Action No. 89-1315, Gas Appliance Manufacturers Association, Inc., et al., v. Secretary of Energy, the Department of Energy (DOE) hereby complies with the Memorandum and Order by publishing a "Statement of Reasons for Adoption of Standby Loss Criteria." See Interim Rule published at 54 FR 4537, January 30, 1989. The court remanded 10 CFR 435.109, section 9.3.2 (hereafter referred to as section 9.3.2) and portions of Table 9.3-1 within that section dealing with "Minimum Performance (Loss)" for electric, gas and oil storage water heaters pending reconsideration of those provisions on remand in a manner consistent with the court's opinion. In that regard, the court directed as follows: (1) That DOE provide a statement of reasons for adoption of standby loss criteria, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis, and impact on affected groups; (2) that DOE place in the public rulemaking record all the materials on which it now relies in determining the storage water heater criteria it adopts on remand; (3) that DOE publish its statement of reasons for adoption of standby loss criteria in the Federal Register by November 30, 1989; (4) that DOE make the materials upon which it relies available by November 30, 1989; (5) that DOE invite all interested participants to comment by January 15, 1990; (6) that plaintiffs file their response or responses with DOE by January 15, 1990; and (7) that DOE publish by February 15, 1990, in the Federal Register a statement responding to plaintiffs' critique and any others, again with reference to the statutory requirements and announcing appropriate standby loss criteria. (See

pages 11-12 of Memorandum and Page 1 of Order, dated October 6, 1989.)

Until this process has been completed, DOE is enjoined from taking any public action to enforce the requirements of section 9.3.2 and the relevant portion of Table 9.3-1. The injunction extends only to section 9.3.2 and the portions of Table 9.3-1 dealing with "Minimum Performance (Loss)" for electric, gas and oil storage water heaters, and not to any other provision of the Interim Rule.

DATES: Written comments in response to the "Statement of Reasons for Adoption of Standby Loss Criteria" must be received by DOE by January 15, 1990.

ADDRESSES: All written comments [7 copies) are to be submitted to: Office of Conservation and Renewable Energy, Hearings and Dockets, U.S. Department of Energy, Docket Number CAS-RM-79-112-C, 1000 Independence Avenue, SW., Room 6B-025, Washington, DC 20585, (202) 586-9320.

Copies of the written public comments received may be viewed and/or obtained from the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6020, 9:00 a.m.-4:00 p.m., Monday-Friday, except holidays.

#### FOR FURTHER INFORMATION CONTACT:

Jean J. Boulin, Architectural and Engineering Systems, CE-131, U.S. Department of Energy, Room 5E-080, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9444. Peter A. Greenlee, Esq., Office of General Counsel, GC-12, U.S. Department of Energy, Room 6A-141, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In compliance with the Memorandum and Order of the Court, DOE.

1. Is hereby providing a statement of reasons for adoption of standby loss criteria, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis, and impact on affected groups;

2. Is placing in the public rulemaking record all of the materials on which it now relies in determining the storage water heater criteria it adopts on

3. Is inviting all interested participants to comment by January 15, 1990; and

4. Shall publish by February 15, 1990, in the Federal Register a statement responding to plaintiffs' critique and any others, again with reference to the statutory requirements and announcing appropriate standby loss criteria.

### I. Historical Background

A. Events Prior to October 6, 1989

The Energy Conservation Standards For New Buildings Act of 1976, as amended (hereafter "the Act"), required the Secretary of Energy to develop and promulgate performance standards to improve the energy efficiency for all new buildings in the United States.

On November 28, 1979, DOE published proposed performance standards in the Federal Register, 44 FR 68120. At the time the proposed Building Energy Performance Standards (BEPS) were published, over forty States had already adopted energy conservation standards, developed by the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE), as their mandatory energy conservation standard for new building design, and many local governments had incorporated them by reference into their building codes. ASHRAE Standard 90-1975 entitled Energy Conservation in New Building Design and the version revised in 1980 and known as ANSI/ ASHRAE/IES Standard 90A-1980 is a component performance standard that identifies minimum performance criteria for the major components of a building, i.e. envelope, heating, ventilation and air conditioning and lighting systems. BEPS represented a radical departure from the standard practice of the building community in that it required a "whole building" approach rather than a building component simulation analysis.

The Federal Register notice generated over 1,800 technical and substantive comments regarding the proposed performance standards. DOE was urged to work more closely with the building industry in the development of standards and to consider using ANSI/ ASHRAE/IES Standard 90-1980, a building industry consensus standard.

On October 8, 1980, Congress amended the Act requiring that DOE promulgate interim standards by August 1, 1981. Congress modified the interim standards so that they would only apply to new federal buildings.

On August 13, 1981, Congress again amended the Act in order to create the term "voluntary performance standards", eliminate the possibility of statutory sanctions for noncompliance, and add a provision that, except for federal buildings, voluntary standards would be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings.

The various legislative amendments to the 1976 Act have required DOE to make fundamental changes in the compliance

aspects of the commercial building standards. Specifically, while DOE retained the responsibility to develop performance standards which would achieve the maximum practicable improvements in energy efficiency, these standards would become mandatory design requirements for the federal sector but would serve only as guidelines for the design of non-federal buildings.

In response to numerous comments, alternatives to the whole building performance approach were included in the form of prescriptive and component performance compliance paths. In response to numerous comments, it was decided to seek a broader spectrum of building industry input in the development of the standards.

In 1981-84, DOE developed improved design standards and guidelines utilizing the ANSI/ASHRAE/IES Standard 90A-1980 as the baseline standard. This was done in conjunction with the ASHRAE Special Projects Committee 41 (SP 41) and supported by detailed engineering and economic analysis conducted by research and practicing architects and engineers. A Project Plan for the Development of Recommendations to upgrade ANSI/ASHRAE/IES Standard 90A-1980 including the DOE's draft modification to the

By October 1983, DOE finalized its Recommendations for Energy Conservation Standards and Guidelines for New Commercial Buildings, which consisted of four volumes of forty separate technical documents.

On January 26, 1984, DOE published a Notice of Inquiry to enumerate the goals of the agency and solicit public comment on the aforementioned 1983 Recommendations. 49 FR 3245, 3246 (January 26, 1984).

On April 25, 1984, the Gas Appliance
Manufacturers Association, Inc.
(GAMA) submitted timely comments on
DOE's Notice of Inquiry. DOE and
support staff at DOE's Pacific Northwest
Laboratory, and ASHRAE SP41,
received GAMA's comments noting
GAMA's identification of
inconsistencies with the ASHRAE 90A1980 standard.

Subsequent to completion of the research findings, as published in the Federal Register on January 26, 1984, DOE, ASHRAE and the Illuminating Engineering Society of North America (IES) shared expertise and research results in order to continue development of the most effective standards. In particular DOE worked very closely with the then newly formed ASHRAE Standing Standards Project Committee (SSPC 90R), and DOE Personnel and laboratory support staff regularly

participated in SSPC 90R meetings since the committee was formed in 1984. GAMA also attended many of those meetings and participated in discussions with committee members regarding the rationale that the committee used in developing its own water heating criteria. The SSPC 90R water heating criteria were eventually incorporated by DOE in the promulgation of its Interim Rule and subsequently became the subject of Civil Action No. 89–1315 discussed above.

Over a three year period, SSPC 90R prepared three drafts of their Standard 90.1P. These drafts, dated 1985, 1986, and 1987 were open to public comment. ASHRAE shared comments on the public review drafts with DOE, as well as its response to such comments.

During this extensive research and development process, SSPC 90R, with DOE encouragement, formed an ad hoc working committee of subcommittee members, equipment trade associations (including GAMA), and manufacturers to obtain information and to better categorize and evaluate equipment criteria proposed by SP 41. Information was sought on proper categorization of products and desired table formats; industry statistics—especially shipmentweighted efficiency and product efficiency availability; recommended levels for minimum efficiency requirements; and recommended approaches and appropriate minimum efficiency levels for part-load. SSPC 90R and DOE relied on information from DOE and other research studies. analyses of progress in residential water heaters, work by state energy commissions, and professional expertise to set criteria for service water heaters. The reference information which was influential in the evolution and development of ASHRAE's and DOE's standards for storage water heater standby loss consisted of the following:

Arthur D. Little Inc. 1982. Consumer Products Efficiency Standards Engineering Analysis Document. DOE/CE-0030, prepared for the U.S. Department of Energy. Washington, DC.

USDOE. 1983. Supplement to: March 1982 Consumer Products Efficiency Standards Engineering Analysis and Economic Analysis Documents. DOE/CE-0045, U.S. Department of Energy, Washington, DC.

Harris, J.E. 1984. Test Results and A Recommended Test Procedure for Heat Trops. NBSIR 84-2851, prepared by the National Bureau of Standards for the U.S. Department of Energy, Washington, DC.

Demetri, E.P., M.P. Sespaniak, and J. Gerstmann. 1984. High-Efficiency Commercial Water Heater Development. GRI-84/0188, prepared by Advanced Mechanical Technology, Inc., for the Gas Research Institute, Chicago, IL.

Palla, R.L. 1979. Evaluation of Energy-Conserving Modifications for Water Heaters. NBSIR 79-1783, Final Report, National Bureau of Standards, Washington, DC.

Vasilakis, A.D., J.F. Peraron, and J. Gerstmann. 1980. Research and Development of a High Efficiency Gas-Fired Water Heater. Volume 1, Final Report Summary, ORNL/Sub-7381/1; and Volume 2, Concept and Market Evaluation, ORNL/Sub-7381/2. Prepared for Oak Ridge National Laboratory. Advanced Mechanical Technology, Inc., Newton, MA.

The resultant criteria were different in form and more stringent than the recommendations in the Notice of Inquiry, to reflect advances in test procedures and water heater appliance standards. More importantly they accomplished the purpose of the Act. DOE reviewed the SSPC 90R modifications, including the criteria for water heaters, and determined to incorporate the changes into its standards for the design of new federal buildings.

On May 6, 1987, DOE published its Notice of Proposed Interim Rule and Public Hearings and Finding of No Significant Impact for Energy Conservation Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings.

The research employed to develop the proposed interim standards consisted of five major elements performed sequentially but with considerable overlap. They were: [1] Evaluations of ASHRAE 90A-1980 and the identification of its problem areas; (2) some additional research to develop improvements; (3) testing for energy conservation and economic effectiveness, (4) the formulation of a Draft Standard that would provide the basis for proposed interim standards for federal use concurrent with promoting its voluntary use in the private sector, and (5) extensive analysis of provisions of the draft standard followed by additional research in key areas such as envelopes and lighting. The initial research was performed on a component-by-component basis. Later on in the project, however, all the component results were integrated and evaluated to determine the overall building effects.

In addition to accepting written public comments on the Proposed Interim Role, DOE scheduled three public hearings in New Orleans, San Francisco and Washington in order to provide an additional forum for public comment. On June 11, 1987, at the public hearing held in Washington, DC, a senior official of GAMA addressed this public hearing and reiterated GAMA's concerns, as

previously expressed to ASHRAE, over the proposed water heater standards.

On July 27, 1987, GAMA submitted written comments to DOE's proposed energy conservation standards for new commercial and multi-family high rise residential buildings, GAMA again asserted that the proposed standby loss requirements for commercial water heaters were unreasonable. All public comments, including those by GAMA, were categorized and evaluated by DOE during the period of time between publication of the Proposed Interim Rule and the publication of the Interim Rule.

DOE has looked at the technical feasibility, and economic viability of energy conservation measures. In the case of water heaters these measures meant additional insulation, heat traps in water input and output lines, and improved flue and vent dampers. Each of these has been technically achievable for years. In addition, insulation and heat traps have been shown to be cost effective for residential units and projection of that analysis to commercial units showed them to be cost effective for commercial units as well. Moreover, flue improvements and vent dampers in commercial size units were also shown to be cost effective by the research. Finally, extension of the residential production analysis used for the appliance standards program and the Gas Research Institute research showed there would be a small impact on producers.

On January 30, 1989, DOE published the Interim Rule for Energy Conservation Voluntary Performance Standards for Commercial and Multi-Family High Rise Residential Buildings: Mandatory for New Federal Buildings. GAMA submitted the only comment on DOE's standby loss criteria. In reference to GAMA's comments, DOE, relying on the current research in this particular area, rejected GAMA's assertion of overly stringent standby loss standards, and thereby, maintained the same standby loss requirement as detailed in the Proposed Interim Rule. In that regard, in addition to the ongoing joint research with ASHRAE and the previously cited analyses, DOE relied upon the following new information in the standby loss area:

Excerpts of advance drafts of Crawley, D.B. and Briggs, R.S., Building Energy requirements database guidebook for office buildings, GRI-89-0029. Chicago, IL., Gas Research Institute.

As required by the Act, upon issuance of the interim standards, DOE commenced a demonstration project to test and evaluate the impact of the standards.

B. Events Subsequent to October 6, 1989

Since October 6, 1989, DOE has performed a complete review of the storage water heater standby loss criteria. For this activity, DOE has decided to supplement its policy of working in conjunction with other consensus standards organizations and, carried out this re-analysis internally with its Pacific Northwest Laboratory support staff. DOE not only reexamined the documents that it relied upon in promulgating the interim standards standby loss criteria, but sought out additional documents that were pertinent to the subject. These additional documents include publications that provide background data for some of the original supporting documents as well as documents published subsequent to DOE's determination of criteria for storage water heater standby loss in the interim rule. These documents are itemized at Section III, DOE Reference Materials.

With this background, DOE now provides a statement of reasons for adoption of standby loss criteria, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis, and impact on affected groups.

## II. Applicable Statutory and Judicial Criteria

Congress mandated, in section 501(b)(1) of the Department of Energy Organization Act, 42 U.S.C. 7191(b)(1), that the Secretary of Energy, in promulgating energy standards, must include "a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation or order." In addition, section 501(d), 42 U.S.C. 7191 (d) provide that after the notice and comment period, the Secretary may promulgate a rule if the rule is accompanied by "an explanation responding to the major comments, criticisms, and alternatives offered during the comment period." Section 310 of the Energy Conservation Standards for New Buildings Act, 42 U.S.C. 6839, specifically provides that such standards must be "adequately analyzed in terms of energy efficiency, \* economic cost and benefit, and impact on affected groups." In addition, section 302 of the Energy Conservation Standards for New Buildings Act, 42 U.S.C. 6831(b)(2), requires DOE "to achieve the maximum practicable improvements in energy efficiency and increases in the use of nondepletable sources of energy." In that regard, the October 6, 1989 Memorandum of the

court concludes that the word
"practicable" in section 302(b)(2)
"reinforces the requirement of section
310 that DOE take into account costbenefit and constituency concerns and
not simply sacrifice all other concerns to
any reductions in energy use." Further,
standards setting activities "shall be
designed to assure that such standards
are adequately analyzed in terms of
energy efficiency, stimulation of use of
nondepletable sources of energy,
institutional resources, habitability,
economic cost and benefit, and impact
upon affected groups."

Finally the court's Memorandum further states that "increased energy efficiency must be weighed against potential increases in overall dollar costs arising from new standards under some articulated formula".

## III. Description of Storage Water Heater Standby Loss Criteria In Question

The Storage Water Heater Standby
Loss Criteria in question are part of
§ 435.109 of the interim standards,
entitled "Service Water Heating
Systems", published at 54 FR 4689. This
section identifies the scope, design
principles, minimum requirements, and a
prescriptive compliance method for
service water heating systems and
equipment. Minimum requirements have
been set for the following:

· Sizing of systems;

- Equipment efficiencies, including standby loss criteria (found in Table 9.3– 1);
  - · Heat traps;
  - · Piping insulation;
  - · Equipment temperature controls;
  - Swimming pool water heaters;
- Combination service water heating/ space heating equipment;
- Additional equipment efficiency measures, including Electric Water Heaters and Gas-Fired Water Heaters; and
- Use of waste heat, solar energy and thermal storage.

All water heaters and hot water storage tanks are addressed in Table 9.3–1. This includes electric, gas, and oil storage water heaters, unfired storage tanks, gas and distillate oil instantaneous water heaters, and swimming pool water heaters. There is one exception to the standby loss criteria; storage water heaters and hot water storage tanks having more than 500 gallons of storage capacity need not meet the standby loss requirements of Table 9.3–1, (1) if the tank surface area is thermally insulated to R–12.5 and (2) if a standing pilot light is not used.

The standby loss criteria for electric, gas, and oil storage water heaters is

highlighted in the right hand column of Table 9.3–1. Although the word "standby" could intuitively infer only that period of time when the storage water heater is not used (e.g., overnight), the criteria address the constant loss of heat energy experienced by a storage water heater while holding heated water not immediately being drawn for use in a building. A "storage water heater" is a water heater that has an input rating of <4000 Btu/hr per gallon and a storage capacity of more than 10 gallons.

The covered water heaters include the following: electric storage water heater with a storage capacity of more than 120 gallons or an input rating of more than 12 kW; gas storage water heaters with a capacity of more than 100 gallons or an input rating of more than 75,000 Btu/h; and oil storage water heaters of more than 50 gallons or an input rating of more than 105,000 Btu/h. The covered electric storage water heaters are required to have a standby heat loss of less than 1.9 W/ft². The covered gas and

oil storage water heaters are required to have a standby heat loss of less than 1.3 + 38/V percent per hour. Standby loss is based on 80 °F, or the change in water temperature in percent per hour based on a nominal temperature of 90 °F. The pertinent portions of Table 9.3-1 that address standby loss are included in the table in the right-hand column under the heading "loss."

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Table 9.3-1
Standard Rating Conditions & Minimum Performance of Water Heating Equipment

Туре	Fuel	Storage (Gal)	Input	Applicable Test Procedure	Minimum Performance		
					DOE Rating	Eff.	Loss
Storage Water Heaters <sup>2</sup>	Electric	≤120	≤12 kW	DOE Test Procedures, 1985 Code of Federal Regula- tions Title 10, Part 430	EF= ≥0.95-0.00132V		
		>120 (or	) >12kW	ANSI C72.1 - 1972			SL= <1.9 W/ft <sup>2</sup>
	Gas	≤100	≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regula- tions Title 10, Part 430	EF= ≥0.62-0.0019V		
		>100 (or	) >75,000 Btu/h	ANSI Z21.10.3-1984 Gas Water Heaters		Et=	SL=
			stayn	w/Addenda Z21.10.3a-1985		77%	<1.3+ 38/V
	oil		≤75,000 Btu/h	DOE Test Procedures, 1985 Code of Federal Regula- tions Title 10, Part 430	EF= ≥0.59-0.0019V		
		≤50	<105,000 Btu/h		>0.59-0.0019V		
		>50 (or)	>105,000 Btu/h	0		E.= 83%	SL= <1.3+ 38/V

Table 9.3-1 Standard Rating Conditions & Minimum Performance of Water Heating Equipment (Cont.)

Class		Туре				
		Fuel	Input Capacity	Applicable Test Procedure	Minimum Performance Rating	
Unfired Storage	•	All Volume	All Inputs			HL= <6.5 Btu/h·ft <sup>2</sup>
Instantaneous <sup>3</sup>	Gas		All Inputs	ANSI Z21.10.3-1984	E <sub>+</sub> = 80%	
	Distill Oil		All Inputs	ANSI 221.10.3-1984	E." 83%	
Pool Heaters	Gas/ Oil	•	All Inputs	ANSI Z21.56-1986	E,* 781°	

Notes for Table 9.3-1: Terms Defined:

1. EF = Energy factor, overall heater efficiency by DOE Test Procedure

Et = Thermal efficiency with 70 °F, AT

Ec = Combustion efficiency, 100% - flue loss when smoke = 0 (trace is permitted)

SL = Standby loss in W/ft based on 80 °F, AT, or in % per hour based on nominal 90 °F, AT

HL = Heat loss of tank surface area

V = Storage volume in gallons

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The basis for comparing the relative energy efficiency levels for storage water heater standby loss criteria is ANSI/ASHRAE/IES Standard 90A-1980. It was chosen because it is the preeminent basis for State and local energy conservation standards and is currently being utilized in the statutorily mandated project required to demonstrate the impact of the interim standards.

The DOE interim standards reference existing test procedures to determine water heater standby loss. These test procedures were developed by the American National Standards Institute (ANSI) and DOE. The ANSI test procedures were developed under industry consensus process procedures and DOE test procedures were developed in response to legislation under DOE regulatory procedures. (Appendix E to subpart B of 10 CFR part 430) They were chosen as the most current and appropriate test procedures for the DOE Interim Standards standby loss criteria.

1. ANSI Standard C72.1–1972 American National Standard for Household Automatic Electric Storage-Type Water Heaters

The test conditions for determining electric storage water heather standby loss in Watts/ft² are described in detail in ANSI Standard C72.1–1972. Test condictions and equations within the ANSI standard which are pertinent to the DOE standby loss criteria include the following:

Test room temperature: 73.4 ± 3.6 °F (23±2 °c)

Water temperature at tank top: 150±5 °F

Test duration: 48 hours starting after a 24 hour stabilization period

 $\begin{array}{l} {\rm Sp\!=\!W1/A_N} \\ {\rm W1}\!=\! \{2.42\times C_z\!(T_1-T_2) + {\rm Wh}\}\,/\,N \times 80/\\ (T_T-T_8) \end{array}$ 

Where:

Sp=standby performance (Watts/ft²)
W1=Watts loss for 80 °F rise above room
temperature (Watts)

C=actual tank capacity (gallons)

T<sub>1</sub>=average water temperature at start of test (°F)

T<sub>2</sub> = average water temperature at finish of test (°F)

Wh-measured watt-hour consumption

N=number of hours of test

T<sub>R</sub>=average measured room temperature (°F)
T<sub>T</sub>=average water temperature during test
(°F)

An = net surfact area of tank outer casing (ft2)

The standby loss equations adjust heat losses occurring during the test to losses for an 80 °F rise in tank water temperature above room temperature. 2. ANSI Standard Z21.10.3–1984 w/ addenda Z21.10.3a–1985 American National Standard for Gas Water Heaters, Volume III: Circulating Tank, Instantaneous and Large Automatic Storage Water Heaters

The test conditions for determining gas storage water heater standby losses in percent per hour are described in detail in ANSI Standard Z21.10.3–1985 w/addend Z21.10.3a–1985. In the interim standards, DOE references the 1984 test procedures with the 1984 addenda. The most recent test procedures were issued by ANSI in 1988. However, the portions of the test procedures pertinent to standby loss have not changed since 1979.

Test conditions and equations within the ANSI standard which are pertinent to the DOE standby loss criteria include the following:

Test room temperature:  $75\pm10$  °F ( $24\pm5.5$  °C) Water temperature at tank top:  $160\pm5$  °F ( $71\pm3$  °C)

Test duration: 48 hours

 $\begin{array}{l} S \! = \! \left[ \; \left( \! \left( \! \begin{array}{c} CF \times Q_a \! \right) \! \left( \! H \! \right) + E_c \! \right) \! / \! \left( \! \left( \! K \! \right) \! \left( \! V_a \! \right) \! \left( \! T_b \! \right) \right. \\ - \left. \left( \! T_4 \! \right) \! / \! \left( \! \left( \! T_3 \! \right) \! \left( \! t \! \right) \! \right) \right. \times 100 \end{array} \right. \end{array}$ 

Where

S=standby loss, percent per hour, expressed as a ratio of the heat loss per hour to the heat content of the stored water above room temperature

CF=correction factor to correct observed gas volume to standard conditions of 30 inches mercury column (101.3 kPa) pressure at 50 °F (15.5 °C)

K=8.25 Btu per gallon °F (4147.6331 J/L °C), the nominal specific heat of water

V<sub>a</sub>=tank capacity expressed in gallons (L) H=higher heating value of gas, Btu per ft<sup>3</sup> (MI/m<sup>3</sup>)

T<sub>a</sub>=difference between the average value of the mean tank temperature and the average value of the ambient temperature, °F (°C)

T<sub>4</sub> = difference between the final and initial mean tank temperature, °F (°C)

t=duration of test, hrs

E<sub>e</sub>=electrical energy consumption expressed in Btu (kJ)

E<sub>t</sub>=thermal efficiency as determined by this standard

Q<sub>s</sub>=total fuel flow as metered, ft<sup>3</sup> (m<sup>3</sup>)

3. DOE, Title 10 CFR Part 430 Subpart B, Appendix E, 1985 Energy Conservation Program for Consumer Products

The calculation procedure for determining oil storage water heater standby losses as outlined in the DOE test procedure differs from that of ANSI Standard Z21.10.3–1984 w/addenda ANSI Z21.10.3a–1985, in that values of standby loss calculated with the equation(s) found in the DOE test procedure have units of inverse hours while those in the ANSI test procedure for gas storage water heaters have units of percent per hour.

In order to be used for compliance determination, standby losses for both gas and oil-fired storage water heaters must be expressed in percent per hour.

## IV. Discussion of Practicability of Standby Loss Criteria

Several of the methods of evaluation required of DOE, when promulgating building standards, can be employed to measure the practicability of water heater standby loss criteria. Applying these methods to water heater criteria, the following questions can be asked. Do the criteria contribute to building energy efficiency? Are the criteria costeffective when applied to the range of water heaters covered by the criteria? Is it technically possible to construct new water heaters that meet the criteria? Are there water heaters on the market at the present time that meet the criteria? Is there a substantially negative effect on the water heater industry brought on by the application of the criteria? And what effect do the standby loss criteria have on the consumer, in this case the Federal government? A discussion of each of these points follows in Sections A and B.

Practicability can also be measured in terms of the criteria developed and published by other national consensus standards organizations. As stated earlier, ASHRAE has recently adopted similar energy conservation standards for new commercial and multi-family high rise residential buildings. These were developed under ANSI approved procedures. The water heater standby loss criteria in ASHRAE/IES Standard 90.1-1989 (ASHRAE 1989) are exactly the same as the DOE interim standards, however DOE chose to implement the requirements in 1989 while ASHRAE chose 1992. A discussion of this follows in Section B. There are three reasons for this action. First, DOE believes that there will be sufficient water heaters on the market that can meet the criteria at the time buildings designed to the interim standards are built. In practical terms, DOE interim standards will not affect water heater product manufacturers for two to three years. (Further discussion on this point is provided later.) Furthermore, DOE believes that the free play of market forces, absent a unity of purpose or common design to the contrary, will ensure that there are sufficient water heaters on the market that meet the criteria at the time buildings designed to the interim standards are built. Finally, it is in the Federal government's interest to do so in order to reduce operating costs.

## A. Energy Efficiency and Cost-Benefit

The primary reason for including standby loss criteria for storage water heaters in DOE interim standards is that storage water heaters have a constant loss of heat. The major loss is the heat flow due to the temperature difference between the hot water and the cooler room air or out the flue for gas and oilfired storage water heaters. (Hoskins 1977) DOE analysis shows that it is practicable to reduce this waste of energy. While other non-water heater related criteria in the interim standards save more energy, DOE is mandated to achieve the maximum building energy use reduction and is obligated to set practical criteria for reducing this heat loss.

Jacket heat losses constitute the only major heat loss in electric water heaters and can be reduced substantially by increasing the insulation thickness around the water heater jacket (either internal or external to the jacket). Gas and oil water heater standby losses include jacket losses that could be reduced with increased insulation, flue losses that could be decreased with the installation of a flue damper, and pilot light losses that could be eliminated with the installation of intermittent ignition devices. (Blue 1979)

For example, increasing the fiberglass insulation thickness in a 50 gallon electric water heater from 1 to 4 inches has been shown to reduce electric water heater consumption by 7% (6650 kWh/vr to 6200 kWh/yr) at an increased initial cost (retail price) of 11% (\$157 to \$175 in 1975 dollars). (Hoskins 1977) When comparing the benefits of the additional insulation to added cost in 1988 dollars with 1988 average electricity costs of \$21.44/Million Btu (\$0.073/kWh) (Ruegg 1988), there would be an annual savings of \$32.85. Assuming insulation prices have doubled since 1975 due to inflation, the retail price increase would be \$36 in 1988 dollars—a simple payback of just over one year.

Several specific examples are provided below which demonstrate the energy savings that can be derived through the use of added insulation and other energy conservation measures to each type of covered water heater. It should be noted that the standby loss criteria allow for insulation to be placed

internal or external to the water heater jacket.

To calculate the benefit of adding insulation and other first cost measures to water heaters, the relative energy savings must be calculated and translated to cost savings using energy costs. The cost of adding additional insulation and other energy conservation measures are calculated. These include labor, retooling costs, and profit. The ratio of increased costs to energy cost savings are then compared and a payback period established. This was done for several sizes of water heaters.

Because of the complication of flue losses, a gas water heater example is used to provide information on the process used to determine the energy efficiency and cost-benefit values. A similar process is described for electric oil water heaters. Tables for each may be found in a technical support document available for review at the DOE Freedom of Information Office.

## 1. Procedure Used to Analyze Water Heater Standby Loss Criteria

The initial procedure used to analyze storage water heater standby loss criteria was to separate these units into categories bassed on the nature of the loss. Gas and oil-fired units have burners/flames and require flues. Thus standby losses due to the flue must be addressed. Electric units have an immersed heating element and none of the problems associated with combustion. Available test procedures were reviewed and the three included in the interim standards were found to be appropriate.

The standby loss criteria for each storage water heater fuel type category were then separately evaluated, using the appropriate procedure for each. Available data on the number of storage water heater sales of various characteristic types was reviewed and a widely used category was initially selected. The range of categories was also noted. Then the standby loss was calculated for the selected unit both for the ANSI/ASHRAE/IES Standard 90A-1980 base case and for the DOE interim standards. The difference between the base case standby loss and that of the DOE interim standards was then used to calculate the energy savings.

The cost of measures to meet the interim standards was then determined and, using the energy savings above, the payback of the measures calculated. This same procedure was then done for representative units of various sizes above and below the initial unit in order to evaluate the sensitivity of the initial conclusions and to identify trends. Similarly, other assumptions made in the initial calculations were systemically changed to observe trends and their sensitivity to variation.

The following is an example of the procedure used for establishing the water heater standby loss criteria. A typical gas water heater is used as an example.

The Gas Research Institute "High Efficiency Water Heater Development" report indicates that the most prevalent gas-fired water heater input rating is in the range of 100-200 kBtu/hour. (Demetri, et al. 1984) Gas-fired water heaters in this category fall within the size range covered by the standby loss criteria in the interim standards. Accordingly, to demonstrate the effect of the standby loss criteria, the example water heater in Table 1 has: a 100 gallon storage capacity; an input rate of 199,000 Btu/hour; a six inch diameter flue with damper; intermittent ignition device; and insulation on the top and sides. The tank height shown in the table represents the approximate heated surface height of the internal water tank. The height value was obtained from the following equation:

H=V  $\times$  231 / ( $\pi \times D^2/4 - \pi \times FD^2/4$ ) Where:

H=standby period heated surface height (inches)

(inches)
D=water tank diameter (inches)
FD=flue diameter (inches)
V=tank volume (gallons)
231=conversion from gallons to cubic inches

Table 1 presents the standby loss criteria in percent per hour under the column headings of "CR-90A" and "CR-DOE".

Where (for gas water heaters):

"CR-90A"=2.8 + 67/V "CR-DOE"=1.3 + 38/V

The calculated standby loss in percent per hour is presented under column heading "SB" and calculated for various levels of insulation.

Where:

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Where:

Qtot = total standby loss rate not including heating efficiency (Btu/hr) Eff=heating efficiency (fraction) V=tank volume (gallons) Twtr=tank storage water temperature (°F) Tamb = ambient air temperature (°F) Qtot=Qtacket + Qoth

Where: Queket = heat loss through the jacket not including firing rate losses to replace these losses (Btu/hr)

Qeth = heat loss other than jacket and firing

rate losses (Btu/hr)

The "other losses" parameter is an important concept in analyzing gas water heaters in that as the "other losses" become significant (i.e., greater than 40 percent of total losses), the ability of added insulation to meet the required criteria becomes questionable. This concept is further discussed below in Section 3, "Summary of Energy Efficiency and Cost-Benefit for Gas Water Heaters".

## 2. Application of Procedure to Gas Water Heaters

The equations cited above estimate, for a candidate water heater, the standby loss percent that would be obtained if the appropriate test procedure was conducted on the candidate water heater. Using this procedure, tank standby losses for various insulation thicknesses were calculated by computing the loss rate through the jacket top and sides and then adding in the other losses to arrive at a total loss rate for a given tank and insulation thickness. The calculations assume that energy required to make up standby losses can be supplied at 75 percent thermal efficiency. However, this energy can probably be supplied more efficiently because these thermal efficiencies take into account some standby losses. Thus, the calculated results are conservative.

Table 1 indicates that when flue dampers and intermittent ignition devices are used in a gas water heater, the jacket losses are the major source of energy losses incurred during heater standby operation. If it is assumed that these losses account for 90% of the total losses occurring during standby operation of a water heater in minimal compliance with ANSI/ASHRAE/IES Standard 90A-1980 standby loss requirements, the "other losses" are found to be 193.24 Btu/hr for the 100 gallon, 199,000 Btu/hr water heater. Standby loss calculations for this heater indicate that to comply with ANSI/ ASHRAE/IES Standard 90A-1980 (1982 requirements), the water heater requires 1/2 in. of insulation, and to comply with

the DOE interim standards, the water heater requires % in. of insulation.

Even though this example analysis shows that 1/2 in. of insulation is sufficient to meet ANSI/ASHRAE/IES Standard 90A-1980, DOE was unable to find manufacturers literature that showed less than 1 in. of insulation. As a consequence, the following estimate of consumer savings assumes that water heaters that comply with ANSI/ ASHRAE/IES Standard 90A-1980 have a nominal 1 in. of jacket insulation.

Table 1 Standby Losses Calculated Using ANSI Z21.10.3a-1985 Method (Flue Damper & IID)

(Other Losses = 193.24)

Note: The text of Table 1 appears in the Appendix.

To estimate properly the potential consumer savings due to improved standby loss performance, the standby losses had to be calculated for actual operation conditions. The water heater was simulated with the appropriate level of insulation to meet the requirements of ANSI/ASHRAE/IES Standard 90A-1980 and then the DOE interim standards. It was assumed that the water heater tank temperature would be approximately 140 °F. This value was recommended by the "1987 ASHRAE Handbook, HVAC Systems and Applications Volume" (ASHRAE 1985) to minimize the potential of Legionnaires Disease. The commercial service hot water utilization temperature would typically be higher than 140 °F because high volume uses, such as dishwashing and laundry, require temperatures closer to 180 °F. Room ambient temperature for the calculations was set at 72.5 °F; the average prototype building space temperature control setpoints for heating and cooling found in Section 11.5.8.3 of the DOE interim standards. Section 11.0 of the interim standards provides an alternative compliance path that allows greater flexibility in the design of energy efficient buildings using an annual energy cost method. It sets several criteria for modeling prototype buildings.

Improved standby performance savings result from the increased insulation thickness and hence, reduced jacket losses, obtained in meeting the DOE interim standards. Table 2 shows the reduction in jacket losses realized by increasing insulation thickness from 1/2 in. to 3/4 in. for the 90% jacket losses (flue damper and intermittent ignition device (IID) assumed) case.

Table 2—Jacket Loss Rates and Energy Savings Rates Resulting From Increased Insulation Thickness

Note: The text of Table 2 appears in the Appendix.

All jacket loss calculations were made with a FORTRAN program designed to account for surface resistance to heat transfer as well as insulation resistance. The code for the FORTRAN program may be found in the technical support document in the DOE Freedom of Information Office. The program iteratively determines jacket surface temperature in the process of finding surface resistance coefficients. Jacket surface emissivity was assumed to be 0.50; a conservative value for enamel coated steel surfaces. (Chapman 1984) Thermal resistances of water heater tank and jacket cover material were assumed to be negligibly small. Fiberglass insulation conductivity was set to 0.28 Btu. in/h. ft2. °F. This value represents 2 lb/ft3 density fiberglass at an average temperature of 125 °F.

The effects of tank size and percent jacket losses when in compliance with the ANSI/ASHRAE/IES Standard 90A-1980 (1982 requirements) were studied with additional water heater simulations. Tanks with sizes and dimensions representative of water heaters in the A.O. Smith product line guide (A.O. Smith 1988) were simulated in sizes of 100, 129, 221, 411, and 594 gallon sizes. Insulation thicknesses were varied from zero to six inches on the jacket top and sides for these tanks. lacket loss percentages when in compliance with the ANSI/ASHRAE/ IES Standard 90A-1980 requirements were varied from thirty to ninety percent. For assumed jacket losses in the 60 to 90 percent range, it was possible to meet the DOE interim standards requirements with the use of additional insulation. Furthermore, all tank sizes with the 90 percent assumption needed no additional insulation to meet the DOE requirements.

The same procedure was taken for each of the three types of water heaters—gas, electric, and oil. The gas and oil procedures are quite similar as can be found in the two test procedures. The results of the analysis of each may be found in the technical support document that DOE has prepared on this subject. This document is available for review in the DOE Freedom of Information Office.

3. Summary of Energy Efficiency and Cost-Benefit for Gas Water Heaters

The following are summaries of the calculations performed on typical gas water heaters. Table 3 shows that there is a dependence between the base case design assumptions and the ability of such a design to meet the DOE interim standards by jacket loss reduction alone. The parameter that best describes this dependence is the percent of "total standby" loss that occurs through the jacket alone. Increased percentage jacket loss indicates that design features that reduce off-cycle flue or other losses (flue dampers or intermittent ignition devices (IID)) are included in the designs. For example, a water heater with a tight flue damper and intermittent ignition device could be considered above the 80 percent jacket loss category, and a water heater with a less effective flue damper and with a pilot light could be considered in the 70 to 80 percent jacket loss category. Water heaters with an open flue (no damper) and a constantly burning pilot could be in the 60 percent or less jacket loss category. A selective sampling of manufacturers' literature indicates that there are many water heaters that comply with ANSI/ASHRAE/IES Standard 90A-1980 that include flue dampers and/or intermittent ignition devices. (Lochinvar 1989; Mor-Flo/ American 1986; Rheem 1988; A.O. Smith 1988; and State 1989) Such units would be in the 70 percent loss or greater categories and as shown, in Tables 4 through 8, cost-effectively meet the DOE interim standards with no more than 21/2 in. of added insulation. The manufacturers' literature also shows ANSI/ASHRAE/IES Standard 90A-1980 compliant water heaters without flue dampers or intermittent ignition devices. All these latter designs are relatively low in power, e.g., 75,000 Btu/hr, and as a consequence have single flues of smaller diameters with corresponding smaller off-cycle flue losses. Using a conservative assumption that these units can not meet the DOE interim standards with only added insulation, the analysis presented in this Statement of Reasons includes the addition of a flue damper as one path of compliance for this category of water heaters. (Note: Table 3 shows that water heaters with 50 percent jacket losses that comply with ANSI/ASHRAE/IES Standard 90A-1980 cannot meet the DOE interim standards through added insulation alone.)

Table 3—Ability To Comply with DOE Interim Standards by Reduction of Jacket Losses for a Selection of Commercially Available Heater Sizes based on Stated Loss Assumptions

Note: The text of Table 3 appears in the Appendix.

Using the same example, a 100 gallon gas water heater, the insulation thickness required to comply with ANSI/ASHRAE/IES Standard 90A-1980 would require 1 inch of insulation with a 70% loss through the jacket. Under the DOE interim standards, the 100 gallon water heater would require 3 inches of insulation. As is shown in Table 4, the required insulation levels are reduced as the water heater size increases.

Table 4—Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards (With 70 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A-1980 Compliance Level)

Note: The text of Table 4 appears in the Appendix.

Table 5 indicates the amount of energy savings that are calculated for each of the five examples, plus the cost of insulation and total cost of refitting the water heater. In the 100 gallon example, annual energy savings would be \$32.53 using an average gas price in 1988 dollars. This represents a significant annual energy savings of 67.9 therms (105 Btu) of gas at an average gas price of \$0.479 per therm. The cost of the additional fiberglass needed to bring the water heaters to standard would be \$20.48. The total cost, including labor, would be \$51.20, or approximately 2.5 times the cost of the fiberglass insulation. The latter is based on a study conducted by Oak Ridge National Laboratory. (Blue 1979, Figure 2.2). The most significant point in Table 5 is that the payback periods for the additional insulation are very low, thus making the addition cost-effective. This would be true even if the selected multiplier for costs were doubled. For the 100 gallon water heater, the payback period is 1.57 years, significantly less than the 3-5 year payback normally considered good for non-Federal sector energy conservation investments, or the 7 to 10 years typically used by Federal agencies.

Table 5—Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards (With 70 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A-1980 Campliance Levels)

Note: The text of Table 5 appears in the Appendix.

Tables 6-8 provide two additional examples-one for water heaters with 80% loss and the other with 90% loss. The key points to observe in these examples are how the needed insulation is reduced for all tank capacities. In the 100 gallon example, at 80% loss, 11/2 in. of fiberglass insulation is needed. At 90% loss, only 1 in. is needed—the same as is used to meet ANSI/ASHRAE/IES Standard 90A-1980. In other words, use of other energy conserving features such as intermittent ignition devices, in lieu of pilot lights, and flue dampers is an important option. Both are readily available on the market. Also significant are the payback periods for the investment of added insulation. For the 100 gallon example it ranges from 1.27 to 1.57 years, which is significantly lower than other energy conservation investments routinely incorporated in commercial buildings.

Table 6—Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards (With 80 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A-1980 Compliance Level)

Note: The text of Table 6 appears in the Appendix.

Table 7—Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards (With 80 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A–1980 (Compliance Level)

Note. The text of Table 7 appears in the Appendix.

Table 8—Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards (With 90 Percent Losses Through Jacket at ANSI/ASHRAE/IES Standard 90A-1980 Compliance Levels)

Note: The text of Table 8 appears in the Appendix.

4. Summary of Energy Efficiencies and Cost Benefits for Electric Water Heaters

The calculation for the allowable standby losses for electric water heaters is much simpler-involving only the allowable W/ft2 (4 W/ft2 for ANSI/ ASHRAE/IES Standard 90A-1980 and 1.9 W/ft2 for the DOE interim standards). Using the calculation methods described in ANSI C72.1-1972, the minimum R-values for insulation are determined and converted into thickness based on the k-value. Different fiberglass insulation densities produce a similar spread of results. It was assumed that energy required to make up standby losses was delivered with 100% efficiency. The calculations considered

jacket losses through top, bottom, and sides.

Standby losses were calculated based on losses incurred while the water heater tank operated at the test conditions prescribed in ANSI Standard C72.1–1972 for DOE interim standards and ANSI/ASHRAE/IES Standard 90A–1980 (150 °F tank temperature, 73.5 °F room temperature). The calculations of energy savings were based on 140 °F tank temperature and 72.5 °F room temperature (similar to those for gasfired heaters).

Simulations were done with a computer program that iteratively solved tank-surface temperature based on radiative and convective losses (correlations) and the energy balance equation. Note, this is different from the calculations for gas water heater jackets, which were only considered for the tank sides and top—the flame/burner is on the bottom.

The insulation thicknesses needed to bring electric water heaters in compliance with ANSI/ASHRAE/IES Standard 90A-1980 (1982 Requirements) and the DOE interim standards are higher than for gas water heaters. This is due to consideration of combustion and exhaust life safety requirements for gas water heaters. (See Section B. Institutional Resources.) The test case provides these examples of typical electric water heaters-50 gallon, 120 gallon and 170 gallon. All require 11/2 in. of insulation to comply with ANSI/ ASHRAE/IES Standard 90A-1980 and 31/2 in. to comply with the DOE interim standards. (See Table 9.) It should be remembered that flue dampers and intermittent ignition devices are not applicable in electric water heaters.

Table 10 contains the energy savings and added costs for compliance. In all three examples, the annual energy savings are significant—\$21.35 for the 50 gallon heater, \$38.94 for the 120 gallon heater, and \$49.01 for the 170 gallon heater, in 1988 dollars. This is based on calculated electricity savings of 292.46 kWh for the 50 gallon example, 533.42 kWh for the 120 gallon example, and 671.37 kWh for the 170 gallon example.

The added cost for the 120 gallon water heater were calculated to be \$39.20 in fiberglass insulation and \$97.99 overall, and \$50.58 for insulation and \$126.45 overall for the 170 gallon example. The total overall costs were also calculated as 2.5 times the cost of the insulation. Payback for both range from 2.52 to 2.58 years, both well within the excellent range for energy conservation investments.

Table 9—Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and the DOE Interim Standards

Note: The text of Table 9 appears in the Appendix.

Table 10—Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards

Note: The text of table 10 appears in the Appendix.

5. Summary of Energy Efficiency and Cost-Benefit for Water Oil Heaters

The calculations for oil water heaters are very similar to those of gas water heaters; the test procedures are similar and burner configurations are similar. Like gas water heaters, energy savings reductions can result from added insulation, or the addition of flue dampers. The analysis performed was similar to that done for gas-fired heaters, but the efficiencies are combustion efficiencies (100%-stack losses, a measure of actual energy input into water without including standby losses while that energy is being returned). Under these conditions the efficiency requirements are 80% Ec for ANSI/ASHRAE/IES Standard 90A-1980 and 83% Ec for the DOE interim standards. All the other underlying assumptions used in the gas water heater analysis also pertain to oil water heaters.

The oil heater analyzed was similar in geometry to the model used in gas-fired water heater analysis—6 in. flue, 23.75 in. wide tank, 47.9 in. high tank.

In the examples given (Tables 11-13), an 86 gallon oil-fired water heater, the insulation requirements of ANSI/ ASHRAE/IES Standard 90A-1980 result in jacket heat loss rates of 930.75 Btu/h. Jacket heat loss is reduced to 417.10 Btu/ h using the DOE interim standards criteria, or a difference of 513.65 Btu/h. Insulation levels for Standard 90A-1980 are 1 in. and 2 in. for the DOE interim standards. The added insulation can be placed either internal or external to the water heater jacket. Savings from the addition of 1 inch (2 inches overall) fiberglass insulation would be \$21.78, or a total of 4.5 million Btu (at \$4.84/million Btu, 1988 average national price). The cost of installing the insulation would be \$40.80 (\$11.66 for insulation and \$29.14 for the other costs). Again the payback period of 1.87 years falls well within the acceptable range for energy conservation investments.

Table 11—Jacket Heat Loss Rates and Energy Savings Rates Resulting From Increased Insulation Thickness

Note: The text of Table II appears in the Appendix.

Table 12—Insulation Thickness Required to Comply with ANSI/ ASHRAE/IES Standard 90A-1980 and DOE Interim Standards

Note: The text of Table 12 appears in the Appendix.

Table 13—Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards

Note: The text of Table 13 appears in the Appendix.

B. Institutional Resources and Impact on Affected Groups

DOE is obligated under the DOE Organization Act and section 310 of the Energy Conservation Standards for New Buildings Act to analyze the effect its standards would have on the groups affected by each portion of the standards. For water heaters this would include the product manufacturers, product distributors, building designers (architects and engineers), and building owners. The objective of the building standards has been stated elsewhere in this Statement of Reasons-to promulgate standards that save the maximum practicable amount of energy. The term "practicable" pertains to the affected groups because they must either manufacture, supply, design, or bear the cost of buying the water heaters or water heater components that go into buildings.

In setting the water heater standby loss criteria, DOE considered the following questions:

1. Is It Technically Feasible to Meet the Criteria?

There are several ways to meet the standby loss criteria adopted interim standards. For gas and oil water heaters, more insulation, a flue damper, and/or an intermittent ignition device can be added. For electric water heaters, the addition of insulation is the appropriate response. Flue dampers and intermittent ignition devices are a well-established part of the water heater market and readily available. While their addition adds to the cost of gas and oil water heaters, DOE finds no overriding technical reason they can't be added to the covered water heaters. In many cases, flue dampers and intermittent ignition devices are already being specified in the design of commercial buildings.

DOE has assumed the use of fiberglass insulation instead of foam insulation to provide a conservative estimate of technical feasibility in light of the growing perception of problems using CFC-based foam insulations. Studies indicate that the CFCs discharged from foam insulations and other products can damage the earth's atmosphere. However, DOE is aware that many water heaters produced today are insulated with foam. At least one insulation manufacturer claims to have a foam produced without the use of CFCs and it is reasonable to believe others will follow. Foam insulations occupy less volume than fiberglass insulations with corresponding thermal resistance values. For example, an inch of extruded polystyrene foam would have an R-value of 5. To achieve the same R-value, 4-5 inches of fiberglass insulation might be needed, depending on density. DOE found no reason to believe that those manufacturers using foams will be more or less adversely affected than those using fiberglass.

The addition of insulation does present some challenges to manufacturers. Depending on the volume of existing external water heater jackets, it may not be possible for a manufacturer to place the prescribed amount of insulation between the jacket and the tank. This would necessitate either redesigning the jacket, or more practically for those companies that make many sizes, using the next larger jacket size. Both options are technically feasible and cost-effective. An additional option would be to wrap the water heater with insulation once it is

set in place.

There has been some resistance to adding insulation to electric water heaters because of the higher temperatures that the internal wiring would have to endure. DOE recognizes this problem but there are wire products on the market with electric insulation readily capable of withstanding higher temperatures than will be experienced in commercial storage water heaters. Adding insulation to the outside of storage water heaters must be done with care on gas and oil water heaters to avoid causing combustion or exhaust problems. In either case, trained certified installers should be used.

2. What Effect Would the Criteria Have on the Water Heater Market and the Product Distributors?

The DOE interim standards will be voluntary for new non-Federal buildings. The standards will only be mandatory for the design of new Federal buildings (they do not cover buildings constructed with government loans or

loan guarantees). Therefore, as new Federal buildings account for only 2-3 percent of those constructed nationally, DOE finds no convincing evidence that there will be a significant effect on the water heater market or product distributors. In addition, because the DOE interim standards are design standards, it must be understood that because of the Federal building process . the actual procurement of materials and building components are not likely to be affected for two to three years or more. The Federal building process involves several steps. The first is developing the building program, site selection, and producing the preliminary design. The following fiscal year the appropriation of funds is sought for design, construction documents, and cost estimates. Once this has been completed, construction funds are sought in the following fiscal year, based on the design and cost estimates. Once construction funds are appropriated, bidding, procurement of materials, and construction follow. DOE interim standards for many aspects of the building are applied in the first and second steps of this process. In the case of water heaters, the criteria will primarily be used in the second step for specification and cost estimating. Hence, buildings designed in FY 1990 will start construction in mid FY 1991 at the earliest. Most will be commenced in FY 1992

ASHRAE has voted to issue ASHRAE/IES Standard 90.1-1989, as previously noted. The water heater standby loss criteria are the same as those in the DOE interim standards and have an effective date of 1992. Hence, in 1992, the criteria will be the same. It is likely that ASHRAE/IES Standard 90.1-1989 will be adopted nationally by most States as were its predecessor versions, Standards 90-75 and 90A-1980. Commencing with their publication and distribution they will represent recommended engineering practice across the country whether they have been incorporated in local or State codes or not. By 1992, product manufacturers will have to comply with the same criteria across the board. The small but guaranteed market for water heaters that new Federal buildings will provide, which because of the previously described Federal building process will commence in late 1991, should assist manufacturers in making the transition to more energy conserving water heater product lines.

3. Will Building Owners Be Adversely Affected Because of the Added Costs?

It is clear from the analysis conducted, and summarized above, that

the standby loss criteria can be very beneficial to building owners. With short payback periods, they are able to recoup their initial investment within 1 to 2½ years. Any energy and dollar savings beyond the payback period are profit. It has been contended that maintenance of more heavily insulated water heaters could be more expensive, thus reducing profits. However, DOE finds no evidence which links standby loss criteria with higher maintenance costs.

It has been contended that added insulation will require the design of special access doors to permit the installation of water heaters. In Federal buildings, doors are currently designed to widths adequate to accept better insulated equipment. Unlike homes, egress requirements of commercial buildings, with generally larger heating equipment such as boilers and furnaces and cooling equipment such as chillers, already require adequate openings. The same is true in the private sector, too. Hence, no effect on owners is anticipated.

4. What Effects Will There Be on Building Designers?

DOE has identified none. DOE considered that designers must provide space to accommodate equipment in the building design, size the equipment, design the connection of equipment to the larger water system in the building, and specify the equipment. DOE sees no impact on designers in regard to the above tasks relative to the standby loss criteria.

5. Is Fiberglass the Optimal Insulation To Meet the Standby Loss Criteria?

In most of the examples analyzed it is possible to meet DOE interim standards through simple addition of fiberglass. Foam insulation, however, is an option, often only causing the manufacturer to purchase the foam generating equipment (prices can range \$10,000 to \$20,000). With the increased insulating value of the foam, no re-tooling of the jacket size is usually required. Most foams today use blowing agents containing chlorofluorocarbons (CFC). It has been determined that CFC emissions can be damaging to the atmosphere. It is conceivable CFC regulations may be enacted limiting the use of some foams until substitute foaming agents can be identified and tested.

Another option to meet the additional insulation requirements is to provide insitu fiberglass wrap—2 or more inches. For almost all applications in electric water heaters, this will work. There are potential problems associated with

proper installation of the in-situ wrap when used with either gas or oil, or for higher temperature applications. This would require trained installers and/or careful on-site inspection.

According to discussions with several manufactuers, larger water heaters (over 120 gallons) are custom built. (USDOE 1989) Thus, the incremental cost of increasing the jacket insulation thickness is extremely small—as little as \$100 per unit (unit prices vary from around \$1300-11,600) (Gaston 1984).

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## VI. Summary

In the preceding sections of this Statement of Reasons, DOE has endeavored to be responsive to the October 6, 1989 Memorandum and Order of the court in Gas Appliance Manufacturers Association et al. v. Secretary of Energy. More specificially, DOE has undertaken to provide a detailed and substantiated statement of the reasons for and circumstances surrounding its adoption of the water heater standby loss criteria in question, with attention to the relevant statutory requirements, including those dealing with practicability, cost-benefit analysis and impact on affected groups. In that regard, DOE has described and referenced the activities and procedures which its personnel utilized and the materials and data upon which they relied in arriving at the decision to adopt the standby loss criteria which are the subject of the above-referenced litigation and this Statement of Reasons.

In conjunction with the publication of this Statement of Reasons, and in further response to the court's Memorandum and Order, DOE is placing in the public rulemaking record all of the technical support documents and referenced materials upon which it is relying to date. These documents and materials may be examined at DOE's Freedom of Information Reading Room,

Room 1E-190, 1000 Independence Ave SW., Washington, DC. 20585, (202) 586-6020, between 9:00 a.m.-4:00 p.m., Monday-Friday, except holidays.

In further compliance with the Memorandum and Order, DOE is also providing for its receipt of written comments on this Statement of Reasons from the plaintiffs in the abovereferenced litigation and other interested persons. Those comments must be received by DOE by the close of business on January 15, 1990. Section VII below provides additional information on the public comment procedures to be used.

As a final act of compliance with the Memorandum and Order, on February 15, 1990, DOE will publish in the Federal Register a statement responding to such critique(s) or comment as may be submitted by plaintiffs in the "GAMA" litigation and other interested persons, therein discussing the same with reference to the applicable statutory criteria and announcing DOE's determination as of that time as to appropriate standby loss criteria.

## VII. Public Comment Procedures

A. Participation in Response to Statement of Reasons

DOE encourages and invites the maximum level of public participation in responding to this Statement of Reasons. Individuals, Federal agencies, architects, engineers, utilities, States and local governments, building code organizations, builders, builder associations, manufacturers, manufacturer associations, building owners, building owner associations, consumers and others are urged to submit written comment on the Statement of Reasons.

### B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects discussed in this Statement of Reasons. Instructions for submitting written comments are set forth below. Comments should be labeled both on the envelope and on the documents, "Commercial and Multi-Family High Rise Residential Building Standards (Docket No. CAS-RM-79-112-C)" and must be received by January 15, 1990, in order to be considered. Seven (7) copies are requested to be submitted. All comments received by that date and other relevant information will be considered by DOE before final action is taken. All written comments received on the Statement of Reasons will be

available for public inspection at the DOE Freedom of Information Reading Room as previously provided.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the submitting person believes to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and six copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure: (6) an indication as to when such information might lose its confidential character due to the passage of time; and, (7) why disclosure of the information would not be in the public interest.

### List of Subjects in 10 CFR Part 435

Architects, Building code officials, Buildings, Energy conservation, Energy conservation building performance standards, Engineers, Federal buildings and facilities, Housing, Water heaters, Insulation, Voluntary performance standards.

In consideration of the foregoing and in compliance with the court's Memorandum and Order, DOE hereby submits the foregoing Statement of Reasons For Adoption of Water Heater Standby Loss Criteria as identified in (Part 435 of Chapter II of Title 10 of the Code of Federal Regulations Subpart A, Table 9.3-1, Standard Rating Conditions and Minimum Performance of Water Heating Equipment.)

Issued in Washington, D.C. on November 27, 1989.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

BILLING CODE 6450-01-M

(OTHER LOSSES = 193.24)

(FLUE DAMPER & 110)

Table 1. STANDBY LOSSES CALCULATED USING ANSI Z21.10.3a-1985 METHOD

					IN	SULATION		SURFACE	WATER	AIR				
FUEL	(in.)		(kBtu/h)	VOLUME (gal.)	(in.) (	SIDE (in.)	(in.)	AREA (FT2)	TEMP (°F)	(°F)	Q LOSS (Btu/H)	SB (X/H)	CR-90A (X/H)	CR-DOE (X/H)
GAS		23.75	240.00	100.00	0.00	0.00	0.00	35.01	160.00	70.00	4469.83	8.37	3.47	1.68
GAS			240.00	100.00	0.50	0.50	00.00	37.03	160.00	70.00	1150.06	2.41	3.67	1.68
GAS			240.00	100.00	1.00	1.00	00.00	39.09	160,00	70.00	703.50	1.62	3.47	1.63
GAS				100.001	1.50	1.50	00.00	41.19	160.00	70.00	528.68	1.30	3.47	1.68
GAS			240.00	100.00	2.00	2.00	0.00	43.33	160.00	70.00	430.79	1.12	3.47	1.68
GAS			240.00	100.001	2.50	2.50	00.00	45.52	160.00	70.00	369.27	1.01	3.47	1.68
GAS			240.00	100.00	3.00	3.00	00.00	47.75	160.00	70.00	327.11	0.93	3.67	1.68
GAS			240.00	100.001	3.50	3.50	00.00	50.03	160,00	70.00	296.48	0.83	3.47	1.68
GAS			240.00	100.00	00.4	4.00	00.00	52.35	160.00	70.00	273.28	0.84	3.47	1.68
GAS			240.00	100.00	4.50	4.50	0.00	54.71	160.00	70.00	255.16	0.81	3.47	1.68
GAS			240.00	100.00	2.00	5.00	00.00	57.12	160.00	70.00	240.64	0.73	3.47	1.68
GAS			240.00	100.001	5.50	5.50	00.00	29.57	160.00	70.00	228.81	0.76	3.47	1.68
GAS			240.00	100.00	00.9	00.9	00.00	90.29	160.00	70.00	217.90	0.74	3.47	1.68

Table 2. Jacket loss rates and energy savings rates resulting from increased insulation thickness.

GAS HEATER TYPE	ANSI/ASHRAE/IES Standard 90A-1980 (Btu/h)	DOE Interim Standards (Btu/h)	SAVINGS (Btu/h)
FLUE DAMPER & IID	1150.60	708.50	442.10

Table 3. Ability to Comply with DOE Interim Standards by Reduction of Jacket Losses for a Selection of Commercially Available Heater Sizes based on Stated Loss Assumptions.

					plianc
30	40	50	60	70	80
NO	NO	NO	NO	YES	YES
NO	NO	NO	NO	YES	YES
NO	NO	NO	YES	YES	YES
NO	NO	NO.	YES	YES	YES
NO	NO	. NO	YES	YES	YES
	NO NO NO	NO	NO N	NO NO NO YES	NO NO NO NO YES  NO NO NO NO YES  NO NO NO YES YES  NO NO NO YES YES

Table 4. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards (with 70 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance level).

Tank Capacity (gallons)	ANSI/ASHRAE/IES Standard 90A-1980	DOE Interia Standards
100	1 in.	3 in.
129	1 in.	2-1/2 in.
221	1 in.	2 in.
411	1 in.	1-1/2 in.
594	1 in.	1-1/2 in.

<sup>\* 2</sup> lb/ft<sup>3</sup> density fiberglass insulation (k = 0.28 Btu·in/h·ft<sup>2</sup>·\*F)

Table 5. Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards (with 70 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance levels).

Tank Capacity (gallons)	Energy Savings	Fiberglass \$	Total*	Payback Years
100	32.53	20.48	51.20	1.57
129	31.74	21.06	52.65	1.66
221	38.03	18.36	45.90	1.21
411	56.67	27.14	67.85	1.20
594	77.46	37.04	92.60	1.20

<sup>\*</sup> The total cost is based studies that show the total increased cost is approximately 2.5 times the cost of the fiberglass insulation. (see Blue 1979)

Table 6. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards (with 80 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance level).

Tank Capacity (gallons)	ANSI/ASHRAE/IES Standard 90A-1980	DOE Interim Standards
100	1 in.	1-1/2 in.
129	1 in.	1-1/2 in.
221	1 in.	1 in.
411	1 in.	1 in.
594	1 in.	1 in.

<sup>2</sup> lb/ft<sup>3</sup> density fiberglass insulation (k = 0.28 Btu-in/h-ft<sup>2</sup>·\*F)

Table 7. Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards (with 80 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance level).

Tenk Capacity (gallons)	Energy Savings	Fiberglass \$	Total*	Payback Years
100	26.08	13.28	33.20	1.27
129 -	27.72	13.73	34.33	1.24
221	27.99	9.00	22.50	0.80
411	40.93	13.37	33.43	0.82
594	55.90	18.27	45.68	0.82

The total cost is based on studies that show the total increased cost is approximately 2.5 times the cost of the fiberglass insulation. (see Blue 1979)

Table 8. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards (with 90 percent losses through jacket at ANSI/ASHRAE/IES Standard 90A-1980 compliance levels).

Tank Capacity (gallons)	ANSI/ASHRAE/IES Standard 90A-1980	DOE Interim Standards
100	1 in.	1 in.
129	1 in.	1 in.
221	1 in.	1 in.
411	1 in.	1 in.
594	1 in.	1 in.

<sup>2</sup> lb/ft<sup>3</sup> density fiberglass insulation
(k = 0.28 Stu·in/h·ft<sup>2</sup>·\*F)

Table 9. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and the DOE Interim Standards.

Tank Capacity (gallons)	ANSI/ASHRAE/IES Standard 90A-1980	DOE Interim Standards
50	1-1/2 in.	3-1/2 in.
120	1-1/2 in.	3-1/2 in.
170	1-1/2 in.	3-1/2 in.

<sup>2</sup> lb/ft<sup>3</sup> density fiberglass insulation
(k = 0.28 Btu·in/h·ft<sup>2</sup>·\*F)

Table 10. Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards.

Tank Capacity (gallons)	Energy Savings	Fiberglass \$	Total*	Payback Years
50	21.35	23.67	59.18	2.77
120	38.94	39.20	97.99	2.52
170	49.01	50.58	126.45	2.58

The total cost is based on studies that show the total increased cost is approximately 2.5 times the cost of the fiberglass insulation. (Blue 1979.)

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Table 11. Jacket heat loss rates and energy savings rates resulting from increased insulation thickness.

DIL HEATER TYPE	ANSI/ASHRAE/IES Standard 90A-1980 (8tu/h) (Ec = 80%)	DOE Interim Standards (8tu/h) (Ec = 83%)	SAVINGS (Btu/h)
JACKET LOSSES = 80% OF TOTAL LOSS	930.75	417.10	900

Note: These savings are based on assumption that models currently meeting the ANSI/ASHRAE/IES Standard 90A-1980 criteria have 80% of standby loss through the jacket.

Table 12. Insulation Thickness Required to Comply with ANSI/ASHRAE/IES Standard 90A-1980 and DOE Interim Standards.

Tank Capacity	ANSI/ASHRAE/IES	DOE Interim
(gallons)	Standard 90A-1980	Standards
86	1 in.	2 in.

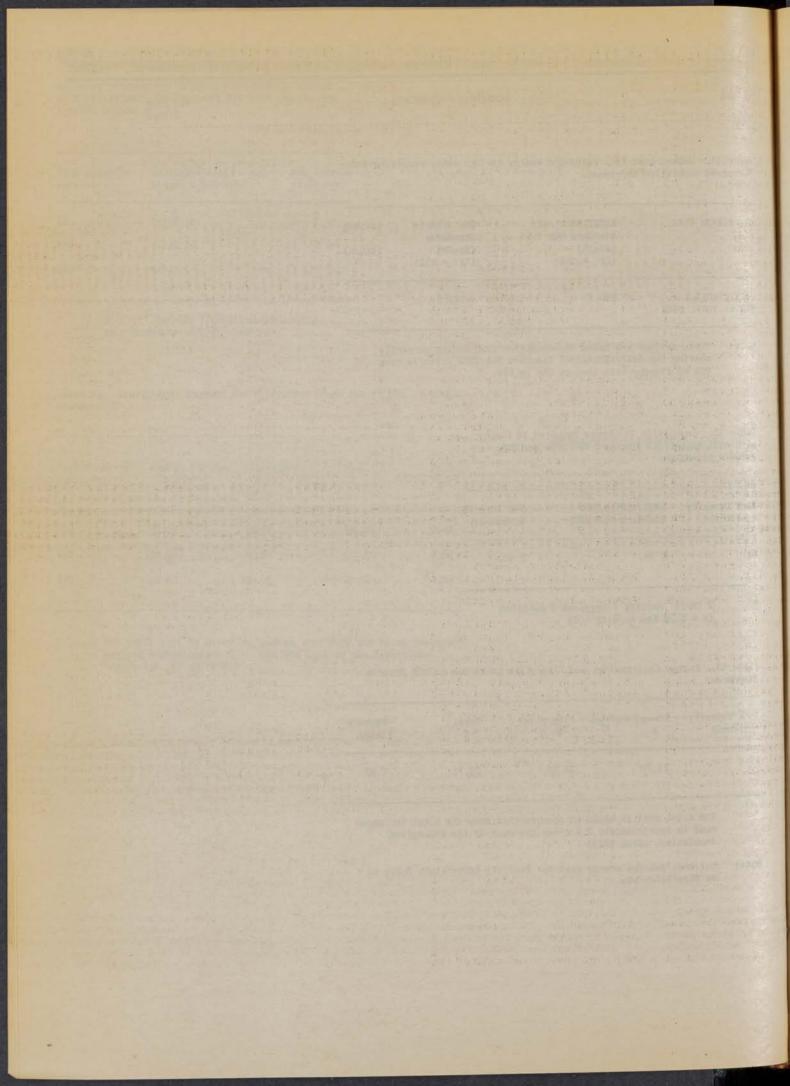
<sup>2</sup> lb/ft<sup>3</sup> density fiberglass insulation (k = 0.28 Btu in/h·ft<sup>2</sup>·°F)

Table 13. Energy Cost Savings and Fiberglass Costs Due to DOE Interim Standards

Tank Capacity (gallons)	Energy Savings	Fiberglass \$	Total*	Payback Years
86	21.78	11.66	29.14	1.87

The total cost is based on studies that show the total increased cost is approximately 2.5 times the cost of the fiberglass insulation. (Blue 1979)

Note: National average energy cost for fuel oil (distillate fuel) is \$4.84/million Btu.



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## LIST OF PUBLIC LAWS

Last List November 27, 1989 This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 523-6641. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 215/Pub. L. 101-173 To amend title 5, United States Code, with respect to the method by which premium pay is determined for irregular, unscheduled overtime duty performed by a Federal employee. (Nov. 27, 1989; 103 Stat. 1292; 1 page) Price: \$1.00

H.J. Res. 291/Pub. L 101-174

Designating November 16, 1989, as "Interstitial Cystitis Awareness Day". (Nov. 27, 1989; 103 Stat. 1293; 1 page) Price: \$1.00

S. 931/Pub. L. 101-175 Genesee River Protection Act of 1989. (Nov. 27, 1989; 103 Stat. 1294; 1 page) Price:

S.J. Res. 184/Pub. L. 101-176

To designate the periods commencing on November 26, 1989, and ending on December 2, 1989, and commencing on November 25, 1990, and ending on December 1, 1990, as "National Home Care Week". (Nov. 27, 1989; 103 Stat. 1295; 1 page) Price: \$1.00

